STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

In the matter of

An Investigation into the Alleged
Misuse of Resources of the Division
of State Police

Commission on Public Integrity
Alfred E. Smith Building
80 South Swan Street, Suite 1147
Albany, New York 12210-8004

October 4, 2007
1:08 p.m.

STENOGRAPHIC RECORD of an Investigative interview under oath conducted pursuant to notice.

INTERVIEWEE: PRESTON L. FELTON, Superintendent
New York State Police

APPEARANCES: For the Commission:
HERBERT TEITELBAUM, ESQ.
Executive Director
MEAVE M. TOOHER, ESQ.
Investigative Counsel
JOAN P. SULLIVAN, ESQ.
Investigative Counsel

PRESENT: ROBERT SHEA, Investigator
GLENN VALLE, ESQ., Chief Counsel
New York State Police

REPORTED BY: BETH S. GOLDMAN, RPR
Certified Shorthand Reporter
PRESTON L. FELTON,
called to appear before the Commission, and being
duly sworn/affirmed by the Notary Public, was
examined and testified as follows:

EXAMINATION BY MS. TOOHER:

Q. Would you state your full name for the
record, please.
A. Preston L. Felton.
Q. Where are you currently employed?
A. New York State Police.
Q. And, what is your position there?
A. Acting Superintendent.
Q. And you are here voluntary today; is that
correct?
A. No. I believe I am here under a subpoena --
or not a subpoena, but I was instructed to be here
on this date. But I didn't have a problem
appearing.
Q. But you are not here pursuant to subpoena;
is that correct?
A. No, I am not.

MS. TOOHER: Before we go forward,
Glenn, would you like to put your appearance on
the record.
MR. VALLE: My name is Glenn Valle. I am Chief Counsel for the New York State Police. I am here as counsel for the agency, not as individual counsel for Acting Superintendent Preston Felton. I am here to render any assistance with regard to the legal policies or procedures that our agency has in place. I appreciate the opportunity.

MR. TEITELBAUM: Superintendent, you are aware that if you had wished, you could have had counsel on your behalf present?

INTERVIEWEE: Yes, sir.

BY MS. TOOHER:

Q. And, you just said you are Acting Superintendent at the State Police right now. How long have you served in that position?

A. Approximately seven months.

Q. And I understand you have expansive duties, but could you give us just a thumbnail sketch of your responsibilities in that regard.

A. I am the commanding officer, and head of the State Police. As part of my duties I manage a Police Department of approximately 6,000 people, 4,900 sworn personnel all of whom are police
1 officers and approximately 1,100 to 1,200 civilian
2 employees.
3 Q. How long have you been employed with the
4 State Police?
5 A. Just short of 26 years.
6 Q. And what position did you serve in prior to
7 Acting Superintendent?
8 A. First Deputy Superintendent, which is my
9 legal current position. But due to the fact that
10 there is no duly confirmed Superintendent the
11 First Deputy Superintendent who is second in
12 command at the agency acts as Superintendent in
13 that absence.
14 Q. Who is responsible for naming you as Acting
15 Superintendent?
16 A. Actually, the law is responsible for naming
17 me as Acting Superintendent. The Governor
18 designated me Interim Superintendent, but there is
19 no such legal designation in the law. So, by my
20 position as First Deputy I serve as Acting
21 Superintendent until a replacement for the
22 Superintendent is named or confirmed.
23 MR. VALLE: If I may, for legal
24 clarification, there is no authority for the
Governor, absent the legislature out of session to appoint an Interim Superintendent or Acting Superintendent for the State Police. Pursuant to our regulations in the NYCRR the First Deputy Superintendent in the absence of the Superintendent automatically assumes the position of Acting Superintendent. The Governor has not nominated any individual. After nomination the Senate at the time does confirm the authority of the person to act as Superintendent.

Q. In your capacity as Acting Superintendent first since serving in this position have you had experience with FOIL?

A. No. In my position as Acting Superintendent I don't handle FOIL requests.

Q. And in your service with the State Police have you ever worked on FOIL requests?

A. Yes, I have.

Q. Can you tell me what that experience is?

A. When I was Station Commander in S.P. Monroe, which is located in Orange County -- it's the Zone 2 headquarters -- I would occasionally get a request from the Records Access Officer to gather records under a FOIL request that our agency
received and then send them to headquarters.

Q. In those instances where you would be asked to gather records by the Records Access Officer would you be provided a copy of the FOIL request?

A. No.

Q. What would happen?

A. They would generally call down and say:
Send us certain records. It may be an arrest report. Sometimes it would be a radio log, those types of documents that are kept at our station.

Q. So, they would make a request for specific documents?

A. Yes.

Q. And would they always identify that this was a FOIL request that they were requesting these documents for?

A. To the best of my knowledge, yes. We are talking some time ago, so -- probably 15 years ago, so I can't be exactly sure. But, to the best of my knowledge, yes.

Q. Are you familiar with the FOIL protocol at the State Police?

A. I am somewhat familiar with it, yes.

Q. What is your understanding of the protocol?
A. My understanding is that we deal with two levels of records. A FOIL would come to the Records Access Officer. That request, pursuant to our rules and regulations is it should be in writing. Then, there is a request that can be conveyed to interview or to examine what we used to call our station blotter. And those records can be examined by an oral request. We no longer have station blotters in our stations, so we -- it really no longer applies.

The oral request usually occurred with media sources coming in every day and asking to see who was arrested on the overnight.

Q. But the oral requests were limited to particular areas or documents?

A. The station blotter.

Q. Solely the station blotter?

A. Yes.

Q. And what is your understanding as to what happens following the FOIL request coming in?

A. I don't understand your question.

Q. You indicated it goes to the Records Access Officer.

A. The Records Access Officer then makes a
determination to release that document or those
documents and then provides them to the requesting
party or denies them to the requesting party.

Q. Okay. And, when the Records Access Officer
makes a determination as to whether or not
documents should be released, do you know what
types of consideration go into that?

A. I know one of the considerations is privacy.

Q. When you say "privacy" what are the factors
that are considered under that?

A. If there is information in the document that
would invade someone's privacy or that may expose
someone to danger, that type of thing.

Q. Can you give me an example of those types of
documents?

A. Domestic incident report with, you know, a
victim's name, date of birth, and address on them.

Q. Are there any other considerations beyond
privacy? Security interests?

A. There may be at times different security
interests.

Q. What types of interests are those?

A. Whether you would expose someone to danger.

Q. What type of information would you consider
under that type of criteria?

A. I would have to know personally what the circumstances were and what type of document we are dealing with for me to answer that.

Q. Does the FOIL officer make those determinations?

A. I would say generally, yes, sometimes in consultation with our Counsel's office.

Q. Now, you indicated that the FOIL requests go to the records access officer. Who is that in the State Police right now?

A. Captain Lori Wagner.

Q. And do all requests go to her initially, or do they flow to her by a process?

A. Some requests go -- may go first to our counsel's office. Some requests sometimes are made to our PIO initially, and then the PIO will consult with our counsel. Generally, the Records Access Officer handles everyday stuff of the agency.

Q. So, the Records Access Officer doesn't get all FOIL requests?

A. Some requests may go to counsel's office, the more sensitive stuff.
Q. And when we say "the more sensitive stuff" would go to Counsel's office, would it go directly to Counsel's Office or would it go to the Records Access Officer first?

A. It can work both ways. If she gets one that she deems that she needs counsel's input on, she will go to counsel. If counsel gets one that is sensitive they will handle that, usually gather the records and then consult with her on, you know, how to disperse the records when requested.

That is my understanding of what happens.

Q. I understand. Generally -- or, I'm sorry, more specifically, even if Counsel's Office is handling what you termed a more sensitive request, it still goes through the Records Access Officer for dispersement of the documents?

A. That, I can't answer because I don't handle the FOIL requests. I mean that is generally between the PIO and Records Access and Counsel's Office.

Q. And you indicated the "more sensitive requests." Could you explain to me what a more sensitive request would be?

A. It can be, you know, a notable case, you
know, a homicide case that may still be open. We would look at that and we would say, you know -- counsel would look at that and say we can't release this. It's an ongoing investigation. It's not every day guys are looking for blotter entries. It's not every day a guy is looking for an arrest report, that type of stuff.

Q. Are there other types of criteria that can make a document request, a FOIL request sensitive?

A. I'm sure there are. If we receive document requests for, you know, public officials, well-known celebrities. I remember a couple of years ago now we received a request under FOIL for information regarding a call that Christopher Reeve's wife made to our 911 center; those types of things.

Q. So, you mentioned public officials. Would requests concerning the Governor be considered a sensitive request?

A. Yes.

Q. And would requests concerning Senator Bruno be considered a sensitive request?

A. Probably, yes.

Q. And in that context what makes those
requests sensitive?

A. The public official; you know, it's obviously an issue that can become, you know, contentious.

Q. When you say "contentious" what do you mean by that?

A. It could, you know, create problems for the agency.

Q. What sort of problems?

A. Well, no public official is happy when some of the information is released about them.

Q. When you say "no public official is happy" what type of information are we talking about?

A. It has been my experience that pretty much anything you release about them they are generally not happy about.

Q. And on that type of request concerning a public official, you would consider that as a sensitive request, so that is a request that you believe would go through Counsel's Office?

A. Yes.

Q. And, have there been any changes in the FOIL protocol since 2007 or since you started as Acting Superintendent?
A. There has been no changes in our FOIL protocol. However, the Spitzer administration is taking a little -- probably the best way to put it is a little bit more transparent view of the way records should be handled in agencies.

Q. What do you interpret that to mean, "a more transparent view"?

A. They want us to be more open with the public. The State Police -- we as an agency have a reputation of being a kind of closed with regard to FOIL requests. I'm sure you are familiar with Bob Friedman. He called our FOIL policy requests in the past "criminal." I beg to disagree with him, but we are a little bit more restrictive than most people would want us to be.

Q. And how has the Spitzer administration relayed to you this transparency change?

A. A number of ways. Early on, when I took over they made it very clear to me that they were for transparency and ethics in government; that we have to be responsive to the people.

Q. When you say "they made it clear to you," who made it clear to you?

A. The Governor himself made it clear to me,
1 and all of his aides that I talked to.
2 Q. Can you name particular individuals?
3     A. I talked to so many, so I couldn't tell you
4 who exactly said it.
5 Q. Let's take the Governor, for example. What
6 did he say to you directly concerning transparency
7 on the FOIL policy?
8     A. He didn't say this directly on the FOIL
9 policy. Let's be clear on that. What he said was
10 he wanted an administration that was ethical and
11 transparent to the people.
12 Q. So, the kinds of statement he was making
13 publicly concerning transparency in his
14 administration?
15     A. Yes.
16 Q. But, he never specifically spoke to the FOIL
17 policy of the State Police?
18     A. No.
19 Q. What about his aides?
20     A. His aides also stressed the ethics in
21 government, transparency, from the first day that
22 they met with me and that as a public official I
23 would have to conduct myself in an open and
24 ethical manner.
Q. Do you recall who you had these conversations with?

A. I met with a number of people. I met with Rich Baum, Olivia Golden, Bill Howard.

Q. And what did Richard Baum say to you in this regard?

A. Pretty much the same thing, transparency and ethics in government.

Q. Did he speak to the FOIL process and release of documents?

A. No. I have had no discussions myself with anybody in the Spitzer administration with regard to FOIL.

Q. What about the release of documents? Have you had any conversations concerning release of documents by the State Police with the Spitzer administration?

A. I have not had any specific conversations with them. I am aware that -- I believe back in March there was a request for documents from a media source here in Albany who cited the Governor's theme of transparency in government. After we told him we would not provide him with certain documentation, later that day, I believe
it was Paul Larabee in the Governor's Press Office called and said send him the documents and he would release the documents to the press source.

Q. Now, why did you not want to release the documents to the press source?

A. It wasn't a question of not wanting to release them. It was a question of wanting the request in writing like we would always do.

Q. So, you were looking to follow the State Police protocol?

A. Yes.

Q. And, in that instance, was this, do you know, the request from Fred Dicker?

A. I believe it was.

Q. Just for ease, we will call it the March Dicker request. And, when Mr. Dicker made his request in March did he make that request in writing?

A. To the best of my knowledge, no.

Q. And, Mr. Larabee intervened in some way?

A. That is my understanding.

Q. And who is Mr. Larabee?

A. He is one of the press secretaries in the Governor's Office.
Q. And in that instance what is your understanding of what happened?

A. My understanding is our PIO said: Fine, discussed it with me. And I said, "If that's the way they want to handle it, that's the way we will have to go along with that."

Q. Who is your PIO?

A. Glen Miner.

Q. What did Glen Miner say to you about this request?

A. He basically told me he had received a request from Dicker, told me he asked to submit a file request in writing. Dicker quotes the transparency in government. Calls the press office. The press office calls Valle. Calls Miner and says: Send them the documents and they will make a determination as to whether to release it to Dicker.

Q. Even though you were aware of the transparency in government, you were still abiding by State Police protocol as far as the request to the State Police?

A. We were trying to abide by the State Police protocol.
Q. And what is the purpose of the protocol in that instance when you get a request like that from the media?

A. Well, I think for us, we would like documentation that, you know, they are asking for documents. And we also would like clarity on what they are asking for. You know, we don't want to release something that we shouldn't be releasing. We want to make sure, you know, that it's a legitimate request.

Q. And I think you mentioned earlier that there are certain considerations that go into releasing documents under FOIL. There is security consideration.

A. Yes.

Q. And there are privacy considerations. Part of this protocol is to protect these considerations and make sure they are adhered to?

A. Yes.

BY MR. TEITELBAUM:

Q. Superintendent, in the case of a situation which the Records Access Officer is reviewing a FOIL request, I believe you testified that -- I think it's a woman?
A. Yes, sir.

Q. She would sometimes release it and sometimes not release it; right?

A. Yes.

Q. Are there times that the Records Access Officer would release a document in redacted form?

A. That's true.

Q. Okay. Is it fair to say that when that happens, the Records Access Officer might be deleting information that could implicate privacy or security and leave intact information that doesn't; is that fair?

A. Yes, sir.

Q. You also said that the State Police was perceived, at least in some quarters, as being more restrictive as to releasing of documents.

A. Yes.

Q. And I would appreciate your elaborating on that. When you say -- I think the statement is "more restrictive" tell us what you mean by that.

A. What I mean by that is we are a police agency. We recognize that most of this documentation that we deal with is -- has issues like security, like privacy. So, we don't want to
expose people to having their privacy violated or
to put them at risk. So, what we do is, we are
very careful when we release stuff to make sure
those risks are addressed before we do that. We
are never going to be -- In past administrations
I don't think you are going to hear anyone say we
were a friend of FOIL. But, as you know, FOIL has
evolved somewhat. We now work under a different
administration who is more open with the public.
They have done everything from things like this:
Send us the documents and we'll make a
determination to give it out to open up the second
floor, less security at the Capitol to, you know,
the things that we have to deal with. I am a big
believer in transparency in government. I don't
think we should hide from anything. Like I said,
I'm not willing to invade someone's privacy or let
it be invaded.

Q. With the change of administration is it fair
to say that you didn't become -- by "you" I mean
the State Police, obviously -- didn't become less
diligent in vetting documents to see whether they
should be released or whether they should be
withheld
A. No, sir --
Q. In whole or in part because of issues of privacy or less diligent?
A. No, sir.

BY MS. TOOHER:
Q. Do you know Bill Howard in the executive chamber?
A. Yes.
Q. What is your relationship with Mr. Howard?
A. My relationship for right now is I know Mr. Howard. In the past he was my supervisor.
Q. When you say "in the past" how recently?
A. Early July. Up until early July he was my supervisor in the executive chamber. He was the Assistant Deputy Secretary for Homeland Security and I reported directly to him.
Q. And, how long did you have that reporting relationship with Mr. Howard?
A. I had that reporting relationship with him probably for about five months. I had been familiar with Bill Howard for about ten years.
Q. How did you know him over that time frame?
A. As First Deputy Superintendent I dealt with him probably on a daily to weekly basis sometimes.
Q. In what capacity?
A. In the Pataki administration he was the First Deputy Secretary to the Governor, so he was the person who generally ran what is known as State Operations.
Q. And how does that relate to the State Police?
A. We come under the operations of the executive chamber. I mean our agency fits under him. The Superintendent was a direct report to Mr. Howard on one end and Chauncey Parker on the other.
Q. And you were Deputy Superintendent at that time?
A. First Deputy Superintendent commanding the agency.
Q. What was your reporting relationship to Mr. Howard?
A. My relationship, reporting relationship was that in the absence of the Superintendent he would call me to get things done. I also dealt with him fairly frequently because the position of the First Deputy Superintendent handles the Governor's Protection Unit, and the First Deputy under
Superintendent Bennett also handled the aviation unit.

Q. So, you dealt with Mr. Howard on issues of the Aviation Unit as well as the Governor's protection unit?

A. That, in addition to different operational issues. Whatever the Superintendent was dealing with Mr. Howard on, if he couldn't reach the Superintendent he reached me. If the Superintendent was out of the office and he called, he would put it in to me.

Q. And, were you responsible for the aviation unit at that time?

A. At which time?

Q. During the time that Mr. Howard was with the Pataki administration.

A. Yes, for most of that time.

Q. In what time frame?

A. I was responsible probably sometime in 2004 up until I became Acting Superintendent.

Q. So, up until 2007?

A. Yes.

Q. And what were your responsibilities with regard to the aviation unit?
A. To basically manage it and oversee it, to make sure they were operating and using their resources correctly.

Q. Did that include flights on the State Police helicopter and use of state planes?

A. Yes.

Q. What were your responsibilities in that regard?

A. I would approve all State Police related travel on division aircraft with the exception of that for the Superintendent. The only other exception would be emergency travel in law enforcement, if there is a law enforcement issue where they needed an immediate flight and any State Police Colonel or the aviation unit had authority to put aircraft in the air. But for the general, everyday travel of State Police members and executives, all of that had to go through me.

Q. Did you have any role in executive travel with the aviation unit?

A. I was sometimes advised of executive travel, but I have no role in approving or disapproving executive travel for executives outside of the State police.
Q. So, travel for the Governor, Lieutenant Governor, Senator Bruno, wasn't within your command or control while you were serving in that position?
A. No.
Q. And, when you say you were familiar with it, you might be aware that a particular trip was occurring --
A. Yes.
Q. -- but you didn't get involved in the approval process at all?
A. Absolutely no. No involvement with that whatsoever.
Q. Were you aware of what the approval process was during that time frame?
A. Yes.
Q. What was your understanding of the approval process during the Pataki administration?
A. The requesting person would make a -- I don't know if application is the right word, but make a request to the executive chamber. A member of the executive chamber would generally approve that flight. They would sign off on the sheet. Then, they would send that over to aviation with
Q. Was Mr. Howard involved in that process, to your knowledge, during the Pataki administration?
A. He may have been. But my recollection is that the Secretary to the Governor kind of had the final say on that approval.

Q. Do you recall who that was?
A. John Cahill.

Q. And, were you aware of anything having to do with executive travel and ground travel during the Pataki administration?
A. Yes.

Q. What was your role in that regard?
A. We generally provided ground travel to one individual, Senator Joseph Bruno, in connection with an approved helicopter flight to New York City.

Q. And, was this on one occasion or fairly regularly? How often would that happen?
A. It happened on multiple occasions. The exact number I do not know. But I can tell you sometimes it was frequent. Sometimes we wouldn't get them for awhile. It would go back and forth.

Q. And, the ground travel with Senator Bruno
you indicated it would be in relation to an approved helicopter flight; is that correct?

A. Yes.

Q. How would you be notified of that?

A. I would generally get the notice. One of Bruno's secretaries would fax us itinerary of what the proposed trip was. And if it was a last-minute thing, she would generally call us.

Q. And when you say she would fax you an itinerary, this would be to you directly?

A. She would fax it to my office; not directly to me, to my office.

Q. What would you do with that?

A. I would generally call down to New York City to the Troop Commander and advise him Senator Bruno is coming down, assign however many personnel that he would request and an additional number of cars to handle that request.

Q. And what type of information would be in the itinerary?

A. Generally, it would say something like:

Flight leaving Exit 23. That's the heliport at the Thruway headquarters, and the ship number is --
Q. The tail number?
A. Tail number 430NY or whatever, what time he is leaving, who is traveling with him, where they are going to the City. Generally it was one of three places: West 30th, East 34th, or Wall Street. And, then, there would be a number of times and locations and --
Q. I'm sorry to interrupt. When you say "where he is going in the city," you mean 00?
A. Where the helicopter is going to be landing. Then, there would be a number of times and different locations. It may say: 2:30, Sheraton Hotel. 4:00, some restaurant. 5:30, dinner; that type of thing.
Q. And, what would you do physically with that itinerary once it was provided to your office?
A. Generally, I would fax it down to our New York City headquarters.
Q. And did you regularly receive these itineraries when you received a travel request from Senator Bruno?
A. Yes.
Q. And, to your knowledge, were those itineraries ever released pursuant to a FOIL
request?

A. That, I don't know.

Q. Well, so to your knowledge, they were not released? I'm not saying they may not have been, but you don't know of any instance when they were released pursuant to a FOIL request?

A. The only instance I know of them being released is the instance back in early July.

Q. We'll get to that, but right now we are talking about under the Pataki administration.

A. Again, I don't know if they were ever released under the Pataki administration.

Q. And, has there been any change, to your knowledge, in the protocol for requesting ground travel associated with executive flights?

A. There has been no change that I know of in how they request ground transportation, other than sometime last year -- I believe it was last year -- it was brought to our attention that our people were acting as security for Senator Bruno Bruno. That was brought to our attention by the Pataki administration and they wanted that practice stopped.

Q. Who brought that to your attention?
A. I believe it was Bill Howard. And I believe -- I'm not sure if he told me or if he told the Superintendent. But I remember discussing it with the Superintendent and calling down to Major Smith who was Troop Commander at the time, saying: No more. We are not providing security; we are providing transportation.

Q. Now, when you say "providing security for Senator Bruno" what do you mean by that?

A. Our people were actually accompanying him into events and that was not the way this thing was set up. It was set up to provide him with transportation. But our investigators are professional, eager people, so they probably went the extra step not knowing that that wasn't approved by the Pataki administration.

Q. When you say they were accompanying him into events, what is the purpose of their accompanying him at that point?

A. I think their thinking was that they are providing him with security. And, you know, the Pataki administration's belief was he doesn't warrant the additional security.

Q. And what are they trying to keep him secure
from?

A. I don't know if they are trying to keep him secure from something or they are just doing what troopers normally are doing with any person marked as a dignitary of VIP.

Q. What are the considerations in escorting someone who is a VIP or dignitary?

A. I think number one would be that some harm could come to him. And number two is that they get to where they are going on time and in the right place. What we tend to do with a VIP is advance the location they are going. Say, if we were bringing someone to this building or meeting here, we would the day before or earlier that day come here to this office and say: We are bringing Glenn Valle here today to meet with Mr. Teitelbaum. Where is the meeting going to take place? And, then, we would know, get on the elevator, come to the eleventh floor, bring him into this office or whatever office you are going to meet with him in. It's a twofold thing. One is to make sure there is no lost time in moving the person and, two, to make sure we know exactly where we are going and, if we have to leave with
Q. And you indicated that at a certain point in time you received direction from Bill Howard that you should not be providing security for Senator Bruno?

A. Yes.

Q. And, what did you do?

A. I called down to Major Smith who was Troop Commander at Troop NYC and, basically, told him that it's drivers only; it's not security. And I believe I also told him it's one vehicle, not multiple vehicles.

Q. What was the difference in one vehicle versus multiple vehicles?

A. Up until then, depending on how many people were traveling with the senator, we would send multiple vehicles so it wouldn't be three or four people piled in the back. So, we may send two troopers, each one in a separate vehicle, and two people would go in the first vehicle and two people would go in the second vehicle.

Q. Is that a distinction in security?

A. No. That's just a comfort thing. People don't like sitting three adults in the back seat.
MS. TOOHER: My kids don't like sitting three in the back seat.

Q. Was that a direction from Mr. Howard as well --

A. Yes.

Q. -- that you should reduce the number of vehicles?

A. Yes.

Q. What was that based upon?

A. That was a decision by him. I don't know what he based that on.

Q. Was that ever committed to a writing?

A. Not that I know of.

Q. Then you mentioned the itineraries that you received as part of the ground travel during the Pataki administration. And at this point I want to limit the inquiry to during that administration.

A. Okay.

Q. If you had received a FOIL request for those documents what would you have done?

A. If I would have received a FOIL request for those documents I would have consulted with counsel and made a determination on how best to
handle that FOIL request.

Q. So, prior to releasing documents like that, you would have consulted with your counsel?

A. I would have, yes.

Q. And has there been any change as far as that procedure since 2007? If you received a FOIL request now for the ground itineraries what would you do?

A. I would still consult with our counsel.

Q. That would be prior to releasing those documents you would consult with counsel?

A. Yes.

Q. And why would you do that?

A. One reason is because it would be, you know, a sensitive FOIL request and we would want to make sure we are all on the same page and that we are not sending, you know, mixed signals to media agencies that we're going to release some things and not other things.

Q. So, you would still consider the ground itineraries for Senator Bruno a sensitive request under FOIL from the State Police?

A. Yes. I would consider it a sensitive request. I mean I think we would have to release
them, but I would want to make sure that, you
know, that I am on sound footing to do that.
Q. So, you would want to have your counsel
review the documents to determine if there was
anything in there subject to privacy issues or
security issues before you would release them?
A. Again, I wouldn't release them because I
don't handle FOIL, so it would be counsel. And
depending on what type of FOIL request it was,
whether it came from the PIO or the Records Access
Officer, they would make a determination.
Q. So, that kind of request would either go to
the PIO or the FOIL officer?
A. Generally, it would come to -- depending on
who is making the request. Media outlets
generally call our PIO when they want something.
Everyday citizens generally call the Records
Access Officer when they are looking for
something.
Q. But this type of request for ground
itineraries for Senator Bruno would be considered
a sensitive request, so that would probably be
brought to your attention?
A. It would either be brought to my attention
or, if there was a serving First Deputy, the First Deputy's attention.

BY MS. SULLIVAN:

Q. Did it cause you concern, then, back in March when you got the communication from Fred Dicker and Paul Larabee that they were going to circumvent FOIL to the executive chamber? Did it give you pause in March that the FOIL protocol wouldn't be followed?

A. I don't know if I would say "gave me pause."

I would have preferred that they didn't circumvent our policy, but we work for the executive chamber so they generally have the final say on an issue like this. But I have seen numerous of the senators' itineraries. I don't think there is anything in there that can't be released to the public. I mean it's using state resources. I think that is information that the public is entitled to know.

Q. Would you have preferred to have gone through Counsel's Office before releasing that kind of information?

A. I would have preferred they go through us, you know. Let us handle it. It's true, I would
prefer that we do it.

BY MR. TEITELBAUM:

Q. Superintendent, in your experience throughout your 25 years with the State Police, do you know of an instance prior to the Larabee episode that you have just described in which the executive chamber circumvented the protocol of the State Police as you have just described?

A. That's a tough question to answer because I have really been in the job as First Deputy or Acting Superintendent for four years. I'm probably somewhat accurate when I say that from time to time the executive chamber does come to an agency like ours and say: We need you to do this. But I can't say I know of any other specific, you know, very specific indication of that. The Pataki Administration really was, you know -- didn't bother us a lot. You know, they didn't -- it's just not something that they did.

Q. The reason I ask this is because I know that -- and you correct me if I am wrong. I think you have given testimony in the past in which you said that if the FOIL request in the Larabee situation remained with the State Police you would have
required it to be in writing?
A. Right.
Q. And, you would not have released documents absent the writing?
A. If it came to us, yes.
Q. And, so, am I correct that when the documents were requested by Larabee to be given to Dicker without a writing, to an extent your position was that since you were not -- you being the State Police, obviously -- since you are not releasing the documents that the protocol of the State Police remained intact and it was not violated?
A. Yes. We didn't violate our protocol, you know. By them requesting the documents and us giving them the documents, the decision was on them, then, how to handle those documents.
Q. Is it fair to say that once the documents went from the State Police to Larabee in that episode in March, in a sense it was Larabee and the executive chamber -- to use a legal term -- they assumed the risk in a sense?
A. Yes. And let me say this. I think it was Paul Larabee if my memory serves me correctly. I
don't want to say 100 percent it was Paul Larabee, but it was someone from their press office.

Q. I think the record establishes, I believe, that it was Larabee.

MS. TOOHER: Yes.

MR. TEITELBAUM: Thank you.

BY MS. TOOHER:

Q. Did you have conversations after you were named as Acting with Bill Howard concerning executive flight and ground transportation?

A. The only conversation that I had, the first conversations I had was I think in March. It really wasn't a conversation. I think he sent me an e-mail saying: Bruno is taking a flight. What time is he leaving? My recollection is I called over to aviation and got the information and sent him a quick e-mail back.

Q. And what did you tell him?

A. I believe the start time that he was leaving and the time he was due to come back.

Q. What was your understanding of what Bill Howard was looking for at that time?

A. I can't tell you what he was looking for at that time, other than he was looking for what time
1 Bruno's flight was on that day.
2 Q. And did that request come out of the blue?
3 Was it a follow-up to anything? Did you have any
4 prior experience with him?
5 A. No prior experience with him on that matter.
6 He has over my time as First deputy, as I recall,
7 requested similar information for either Senator
8 Bruno or the Governor; what time they are leaving,
9 what time is their flight. But I don't even
10 remember discussing this personally with him other
11 than in the e-mail.
12 (Commission Exhibit 27 was marked for
13 identification.)
14 Q. I am going to show you what has been marked
15 as Commission Exhibit 27 and ask you if this is
16 the e-mail you are referring to.
17 A. Yes.
18 Q. So, would it be fair to say that it was not
19 unusual for Mr. Howard to reach out to you
20 concerning issues about the helicopter?
21 A. No, absolutely not. It wouldn't be unusual.
22 Q. So, he was in fairly regular contact with
23 you about the flights?
24 A. I don't want to say -- I hesitate to use the
term "fairly regular." But, from time to time he
1 did call and ask about flights.
2 Q. Do you know how he was aware that Mr. Bruno
3 was flying on the plane the next day?
4 A. I don't know how. But, again, assumption.
5 The flight had to be approved by the executive
6 chamber for him to even be going on the flight.
7 Q. For Bruno to be going on the flight?
8 A. Yes.
9 Q. And, so, Mr. Howard would be privy to that
10 information in the executive chamber?
11 A. That, I can't say. But I would make that
12 assumption.
13 Q. Do you know where Mr. Howard was located in
14 the executive chamber?
15 A. On the second floor.
16 Q. Was he in proximity so the individual who
17 approved the flights?
18 A. I believe his office was on the opposite
19 side of the building. It's still part of the
20 chamber, the State Operations part of the chamber.
21 So I don't know where the Chief of Staff's office
22 is. That's the person who approves the flight. I
23 don't know where her office is.
Q. That would be Marlene Turner?
A. Yes.

Q. And, did you have any subsequent conversations after this e-mail about this flight?
A. Not to the best of my knowledge.

Q. Do you know if ground transportation was provided as part of this flight?
A. I don't know. I am assuming probably yes, because generally when the senator goes to the city it is us providing him with ground transportation. But it's not something that I set up, so I can't say if it happened or not.

Q. Do you still receive itineraries from Senator Bruno's office concerning ground transportation for these flights?
A. As of --

Q. Since the Spitzer administration has come in.
A. We received them up until early July. We have not received any ground transportation requests. I don't think we received any flight requests since July.

Q. Do you recall if you received an itinerary with this flight request?
A. That, I don't know. But, again, I would not have received that itinerary. That would have gone to Colonel Harney.

Q. And who is Colonel Harney?

A. He is the Deputy Superintendent in the Superintendent's office. Basically, he is temporarily doing 75 percent of my old job that the First Deputy would do.

Q. So, Colonel Harney is now the individual who receives the ground transportation request information from Senator Bruno's office?

A. Yes.

Q. Are you involved in that process at all?

A. Not anymore, no.

Q. When you say "not anymore," as of when?

A. As of February 26th.

Q. So, as of February 26, 2007, you were no longer involved in the ground transportation approval for Senator Bruno?

A. That's correct. The only exception to that would be if Colonel Harney isn't available. Then, they would probably come to me. But I don't recall any instances of that.

Q. And do you recall having subsequent
conversations with Bill Howard concerning Senator Bruno's flights?
A. Yes.
Q. Can you tell me when the next one was?
A. I believe the next conversation I had was mid May, mid to late May.
Q. What was the nature of that conversation?
A. My recollection is that he called and indicated to me that they were working on a FOIL request for records for Bruno and Governor Spitzer.
Q. Do you know what the nature of that FOIL request was?
A. That, I don't know. All he said is he's working on a FOIL request. And at that time he wanted the aircraft records for both of those subjects.
Q. And this is mid May, I think you indicated?
A. Mid May.
Q. And was this your first contact on this FOIL request for the documents for Senator Bruno and the Governor?
A. To the best of my knowledge, yes.
Q. If I told you that Bill Howard testified
that when he made contact with you, you were already aware of the FOIL request and already gathering documents, would that be accurate?

A. No. That wouldn't be accurate.

Q. So, prior to Bill Howard contacting you, you had not been contacted by anyone concerning this FOIL request?

A. No.

Q. And, how did he contact you at that time?

A. I believe by telephone.

Q. Exactly what documents was he looking for?

A. He was initially, if my memory serves me correctly, he was looking for -- it was either one month of flight information or three months. There was subsequent contact that he had.

Q. When you say "flight information" --

A. Basically, flight information for the Governor and Senator Bruno, and that would entail the flight approval sheet that is given by the executive chamber, a copy of our manifest, and any other aviation documents.

Q. And, did he specifically request those documents or just flight information?

A. I think flight information. And generally
(Commission Exhibit 28 was marked for identification.)

Q. I am going to give you what has been marked as Commission Exhibit 28. It's nine pages. The top page is a facsimile transmission cover sheet to Nancy from Suzanne, flight confirmation 5/16/07, and ask you if you can identify these documents.

A. I can identify part of these documents. I don't ever recall seeing a top document, "Nancy to Suzanne," but it looks just like a facsimile cover sheet, so -- these other documents are all the other types of documents that we would keep on executive-generated flights. These are all the documents from the -- this is the document from the executive chamber.

Q. This is an -- I'm going to mark it as A through I and leave the clip on.

A. Exhibit 28 part A, I don't ever recall seeing. It's just a fax copy. It looks like they faxed it to our aviation unit.

B is a flight request information form for the flight for Senator Bruno, type of travel:
1 Helicopter. When leaving, when coming back. And
2 the bottom here is Senator Bruno's signature
3 certifying that it is true and accurate. And,
4 then, this M.T. I recognize as Marlene Turner's
5 approval for the flight.
6 Q. And she is the Chief of Staff in the
7 executive chamber?
8 A. Yes. She's the one that approves executive
9 flights, state executive flights.
10 This is a document -- C is a document
11 generated by by our aviation unit which is
12 basically a flight manifest as to how long our
13 aircraft was used.
14 The next document is (28-D) basically
15 the aviation unit confirming -- it's a
16 confirmation that the flight is going to take
17 place.
18 E is another manifest. I believe this
19 one is for May 17th. So it's probably a trip, one
20 part of a trip.
21 F is another flight manifest. This is
22 indicating an hour flight coming back with no
23 passengers. And another part of the approval
24 flight request information showing that Marlene
Turner has approved the flight and the New York State Police aviation unit is a confirmation so people don't forget that they've got a flight with us.

This form is a form our aviation people use to keep track of different aircraft and stuff.

Q. Would this be fairly representative of the type of flight information documents that you would have provided in response to Mr. Howard's request?

A. Pretty much.

Q. And, do you recall if his request came in before or after the particular trip, any particular trip by Senator Bruno?

A. I think his first request came in after a number of trips for Senator Bruno.

Q. And, do you recall a May 17th trip by Senator Bruno?

A. Yes.

Q. And, do you recall if Mr. Howard's request came in before or after the May 17th trip?

A. I think it came in the day before. And that trip was the one where I had e-mailed him and asked if they wanted us to continue providing
transportation to the senator.

Q. I think you are getting a little confused, and we will use some documents to refresh your recollection on timing.

(Commission Exhibit 29 was marked for identification.)

Q. I am going to show you a document that has been marked Commission 29, a May 21, 2007 e-mail to Anthony Williams from Preston Felton. "Can you send me up the information on the trip that the Majority Leader did last week, itinerary for the trip ASAP." And, you were requesting this itinerary for the trip last week. Do you recall what trip that was?

A. That would have been the May 17th trip.

Q. Mr. Williams apparently in the thread of the e-mail said, "I faxed it up." Did he provide an itinerary to you for the May 17th trip?

A. Yes.

Q. And do you recall if that was in response to a request from Mr. Howard?

A. Yes, it was.

Q. Did you provide that information to Mr. Howard?
A. Yes.

Q. Is that the information that Mr. Howard was requesting from you in his initial phone call?

A. No. That was a secondary phone call.

Q. So, prior to his request for the itinerary for the May 17th trip somewhere on or about 5/21, he had contacted you for different information?

A. As I said, he had sometime in mid May called and asked for flight information for the Governor and for Senator Bruno. We sent him that information. Then, he called back and asked for the itinerary for the May 17th trip. And that's what this e-mail is about, me sending Anthony Williams an e-mail saying: Can you fax me up the itinerary.

Q. Do you recall when sending this e-mail if it was proximate in time to Mr. Howard's request of you for the itinerary?

A. I would say probably shortly after, if I had to guess.

Q. When you say "shortly after" does that mean a matter of days? Hours?

A. No. I would say minutes. I like to handle stuff promptly. I don't like to leave stuff
sitting around.

Q. So, if you sent an e-mail -- this is at 2:23 p.m. on 5/21, it's fairly safe to assume you received the request from Mr. Howard on May 21st?

A. Yes.

Q. It would be your practice to follow up on a request like that within a relatively short period of time?

A. It would be my practice. The only exception to that is if I get distracted by something extremely more pressing than what I was dealing with.

Q. You don't recall anything in particular that would have distracted you for more than a day?

A. No.

Q. The requests for -- I'm going to call them the manifests, the documents we were talking about earlier, that came in prior to this request; is that correct?

A. Yes.

Q. What did you do with that request?

A. When I received his original request I called over to aviation and asked to speak to the Major. He wasn't around, so I spoke with the
chief pilot. It was a Captain, and I asked him to send me the information that Mr. Howard had requested.

Q. And, did he do that?
A. Yes.

Q. And what information did he send you at that time; do you know?
A. The flight manifest, the trip ticket sheet that we talked about. Basically, it would contain that information in this packet that you have here. And, again, I'm not sure if Mr. Howard's first request was for one month or three months, but I know he called back once he got the first documentation and then asked for more documentation.

Q. And he told you that this request was part of a FOIL request?
A. What he said was they were working on a FOIL request; that the executive chamber was working on a FOIL request.

Q. And, that was what he needed the documents for was to respond to a FOIL request?
A. Yes.

Q. And did you take any action further on that
A. On what request?
Q. The request for the documents.
A. Just to gather the documents that he wanted and send them to him.
Q. And, you sent those documents directly to him?
A. I didn't send them. I believe the aviation unit sent them to my secretary and then we sent them down to Mr. Howard.
Q. You knew these documents were in response to a FOIL request from the executive chamber; is that correct?
A. Yes.
Q. Did you say anything to Mr. Howard about directing that request to the State Police directly?
A. No.
Q. Did he indicate to you that this was a media request?
A. I don't know that he indicated that. But, you know, the media FOILS, these types of documents we get all the time. So, I don't want to say he indicated that because it may have been
just an assumption on my part.

Q. So, if I told you that Howard testified before the Attorney General that he told you Jim Odato was looking for books, for information on the flights, would that be accurate testimony?

A. I can't say that's accurate because I don't --

Q. Do you have any recollection of Mr. Howard telling you that Jim Odato was looking for these documents on the aviation flights?

A. No.

Q. Could he have told you that Jim Odato was looking for this information?

A. I think that would be something that I would remember.

Q. Do you remember him telling you it was a FOIL request?

A. Yes.

Q. Do you remember him telling you that it was a FOIL request from the media?

A. Again, I don't specifically remember him telling me that it was a FOIL request from the media. I remember him telling me they were working on a FOIL request. I may have went on the
assumption it was a FOIL request for the media because that is the only people who FOIL these types of documents.

Q. So, it's fairly common for, in your experience, requests for these types of documents come typically from the media?
A. Yes.

Q. And did you consult with anyone before you provided the documents to Mr. Howard?
A. At some point I did check with Mr. Valle again to make sure we were on the same page and that we were not sending different messages to the media or to anybody about our FOIL policy.

Q. What did you inquire of Mr. Valle?
A. If my memory serves me correctly, if this would be, you know, the type of document that we would release. His indication was yes, the public has a right to know. So, it's something that we eventually would give up.

Q. When you say: Would this be the type of document that we would release, do you mean pursuant to a FOIL request?
A. Yes, pursuant to -- you know, if we had that request, yes.
Q. So, you went to Mr. Valle and said: If we had a FOIL request for these documents would we release them?

A. I didn't actually go to Mr. Valle. He came to my office and I kind of ran it by him.

Q. Did you show him the documents at that time?

A. I believe I did.

Q. Did he look at the documents?

A. I'm assuming he did but I can't say for sure. I remember us having a discussion about it, but I can't say if he looked at them and read them.

Q. Do you recall handing them to him or giving them to him to examine?

A. I would assume, yes. I don't know if I gave them to him or if he had them when he walked in.

Q. These documents are different from the documents in the subsequent request on 5/21; is that correct?

A. Which?

Q. The e-mail request in Commission Exhibit 29.

A. Yes -- no. This is not a document that I showed to Mr. Valle that day, this e-mail.

Q. I understand that. That's what I am trying
to clarify. This is now May 21st, which you indicated is after you provided these documents; "these documents" being Commission 28, the typical flight manifest information.

A. My recollection is that there were more of these. (Indicating Exhibit 28)

Q. Was there a time frame that the request covered?

A. The original request covered either one month or three months, and the secondary request covered one or three months. But they were opposite one another. I don't know if the first request was for a month and then they asked for three months, or if the first request was for three months and the second request was for a month. My recollection is that it was one or the other.

Q. But, all the documents requested were of this nature, Commission Exhibit 28, the flight aviation documents, kept by the State Police Aviation Bureau?

A. It was kept by the State Police, basically, for the executive chamber.

Q. Okay. And the request set forth in Exhibit
A. Is for the itinerary.

Q. And, where did you get that document from, the itinerary?

A. From Anthony Williams.

Q. That was faxed to you by Mr. Williams?

A. Yes.

Q. And, that was the itinerary for the 17th?

A. I believe the 17th, yes.

Q. And you provided that to Mr. Howard?

A. Yes.

Q. Did you go back to Mr. Valle at any time on that document?

A. Not that I recall.

Q. So, you didn't consult with him concerning the propriety of providing the itinerary?

A. No.

Q. Do you recall where the itinerary came from? Did it come from Anthony Williams?

A. The itinerary from May 17th, I believe, came from Mr. Williams. Where he got it from, I do not know.

Q. And, did you forward that directly to Mr. Howard?
A. Yes.

Q. I am going to show you what has previously been marked as Commission's Exhibit 5, and ask you if you recall if this is the itinerary you sent to Mr. Howard at that time.

A. I think so, yes.

Q. Had you seen this document prior to sending it to Mr. Howard on that date; do you recall?

A. No.

Q. I am just going to ask if we can compare, talk a little bit about the content of what is in Commission Exhibit 5. Can you tell me what information is set forth in there?

A. A trip to New York City, date and time of the trip, who is traveling, Bruno, Novella, Lovell, McArdle. The date they are leaving: 11:00, helicopter, tail number. Leaves Exit 23, lands in New York City, who the driver is going to be, going to a location C.V. Starr, contact number for what appears to be someone at that location. Then, they are going to Sheraton New York Hotel. Then, Friday 9:00 a.m. helicopter leaves from West 30th. It notes Chris Thompson will replace Mike Novella in the helicopter.
Q. This document, Commission 5, provides a fair amount of information concerning Mr. Bruno's activities; is that correct?

A. It does provide some information of the Senator's activities, yes.

Q. It indicates who will be traveling with him. It indicates the various locations and the times that he will be at those locations; is that correct?

A. Yes.

Q. It also indicates the driver who will be providing services to him; is that correct?

A. Yes.

Q. And it indicates where he is staying as well as the time that he is returning back; is that correct?

A. Yes. It says three p.m. overnight. I am assuming that is where he is staying.

Q. And Commission Exhibit 28 provides much more limited information. It provides departure time and arrival time back home, but it doesn't give you any information concerning Senator Bruno's activities while he is in New York City; is that correct?
A. That's correct.

Q. So, the information is much more specific as contained in Commission Exhibit 5 as to Senator Bruno's whereabouts than the information contained in Commission Exhibit 28?

A. I wouldn't say that. I think if you look at this information, this is the first part of the trip which is the flight information. And this is very specific as to the flight, and this is very specific as to the ground. But it's all from the one trip.

Q. I understand that it's all from the one trip. For comparison purposes I tried to make it as straightforward as possible. But this information doesn't give an hour by hour account of his locations when he is in the City; is that correct?

A. No, this doesn't. But, this is the flight part of the trip and this is the ground part of the trip.

Q. This is a distinctly different document.

A. Yes.

Q. Commission's Exhibit 5 is a distinctly different document than Commission 28?
A. The documents are for two separate purposes for this trip.

Q. And, you didn't consult with Mr. Valle concerning providing Commission Exhibit 5 to Mr. Howard; is that correct?

A. No.

Q. But, I believe you did testify earlier that if the State Police received a FOIL request for Commission Exhibit 5 you would consult with Mr. Valle; is that correct?

A. I believe I said if the State Police receives a FOIL request for these documents that I would consult with Mr. Valle for these types of documents.

Q. When you say "these types of documents" --

A. The travel itineraries.

Q. For the flight manifests?

A. Yes.

Q. But you wouldn't consult with Mr. Valle for Commission Exhibit 5?

A. I may have; I may not. It depends on what is being requested. In this case the ground travel is really a continuation of his air travel.

Is the trip approved by the executive chamber?
1. Did they approve him taking the flight? They know
2. he is going to have State Police transportation on
3. the ground. It's really one continuous process.
4. Q. But these records are provided to the State
5. Police directly; is that correct?
6. A. This record here is provided directly.
7. (Indicating Exhibit 5) This is not our record.
8. (Ex. 5)
9. Q. This was provided to you by Bruno's office?
10. A. Yes.
11. Q. So, Commission Exhibit 5 is not part of the
12. package of documents that is provided to the
13. executive chamber for flight approval; is that
14. correct?
15. A. That, I can't say, because I don't know what
16. the chamber keeps and what they send to us. So, I
17. don't know if they get this and then send us this
18. or hold onto this.
19. Q. You don't know if they get Commission's
20. Exhibit 5 as part of what they send to you in the
21. package as part of Commission 28?
22. A. Yes. That, I don't know.
23. Q. But, Mr. Howard was requesting from you the
24. information concerning Senator Bruno's itinerary
1 contained in Commission's Exhibit 5?
2     A. Yes.
3     Q. And you sent that to him?
4     A. Yes.
5     Q. Had he ever requested itinerary information
6     concerning Senator Bruno in the past?
7     A. Not that I recall. But, again, in over
8     three years possibly, but not that I recall.
9     Q. Do you recall ever providing Senator Bruno's
10     itinerary information to the executive chamber as
11     part of an air request in the past?
12     A. No. But it's not something that we would
13     provide to them.
14     Q. So, it was fairly unusual for him to request
15     that from you as part of his normal air request?
16     A. I wouldn't say it's unusual if he has a FOIL
17     request. Then, I don't think it would be unusual.
18     Q. Has he talked to you about FOIL requests in
19     the past for flight documents?
20     A. He hasn't talked to me, no.
21     Q. Have you provided documents to him in the
22     past as part of a FOIL request to the executive
23     chamber?
24     A. I don't know.
Q. Do you recall providing documents to him in the past?
A. I don't recall. I know I have provided him with different documentation on a number of issues.
Q. When you say "documentation" could you explain that?
A. Reports, memoranda.
Q. Of the State Police?
A. Of the State Police. He is the operations person that deals with us. I can tell you that he has requested to review different confidential reports of the State Police. We have allowed him to do that. He has requested different memoranda concerning different projects that we are going on and we have provided him with that.
Q. But you are talking then about documents being provided in the ordinary course of business to Mr. Howard. You are not talking about documents being provided to Mr. Howard to release as part of a FOIL request?
A. I would say yes, that's the case.
Q. You have not provided documents to Mr. Howard in the past to release as part of a FOIL
request?

A. I would agree with that, yes.

BY MS. SULLIVAN:

Q. Can I just ask about Commission's 5, the May 17th itinerary that the State Police received from Joe Bruno's office. On Senator Bruno's trips, is that the information you typically provided?

A. Either something like this or similar.

Q. Is it in that format?

A. That format, yes.

Q. Or is it sometimes provided by e-mail?

A. Sometimes, if it's a last-minute trip it can be provided by e-mail. And, then, for awhile they would instead -- when I was a First Deputy, instead of faxing it over they may e-mail it over or they may e-mail it to the guys in New York City.

Q. Are there occasions where you would request that itinerary from Senator Bruno's office?

A. If -- I believe the young lady in his office who handles setting up his travel, her name is Leslie. If she called and said the senator is going to New York City, I would say, "Can you send me an itinerary?" And, that allows me to send it
to our people in New York City so they have
something to work off of.

Q. It is not something the State Police
requires from Bruno's office?
A. No. I mean if he said: I am not going to
give you an itinerary; I'll tell you when we get
there, we would work around it.

BY MS. TOOHER:
Q. When you look at Commission's Exhibit 5, it
has on it the driver as well as the tail number on
the plane. How would Bruno's office get that
information?
A. I am assuming from aviation, and the driver
would come from New York City.
Q. And, this information, how far in advance of
the actual flight would that be available?
A. That's tough to say. Sometimes it would be
four or five days. Sometimes it would be, you
know, the day of. It goes back and forth, you
know. Sometimes they would call and say -- Leslie
would call and say: The senator is going to New
York City on Friday. Can we get somebody? I
would say: Yes, send me the itinerary. And I
would call down to the City and say Senator Bruno
is coming down. Assign somebody to him.

Sometimes, they would give me a name and the person's cell phone number, or I would have --

when I talked to New York City I would say, "Call Leslie. Here's her number. Set it up. And they would call her and set it up and then she would fax it to us. And, I would either fax it down or sometimes she would fax it down to the people in the City.

Q. So, there would be two itineraries from the senator's office?

A. No. There would be one itinerary from the senator's office. But sometimes they would call and say he is going down -- it can be planning a flight, planning a trip. He's going down. Can we get ground transportation? Yes. I call down and say: The senator is coming down. Assign somebody to him, and they would assign a person.

Generally, that person or one of the bosses in New York City calls the senator's office and they would work out the details. And, then, she would send the information out. Like this one, I'm assuming she already talked to New York City because she has New York City and she's got his
name here and she has his telephone number.

Obviously, to get that, she has already had to talk to the people in New York City.

Q. So, you receive two itineraries from Senator Bruno's office --

A. We --

Q. -- and let me finish. You indicated they send you an itinerary when you first call down for an officer.

A. No. She will call and tell us that they are planning a trip. The senator is going to New York City and can we set up ground transportation? Yes. Send me an itinerary, okay. So, I call down and arrange the travel. Our people usually will call her. Whoever the guy is assigned will call her. That's how she gets the name here. So, the senator knows this is who is picking him up.

Q. I am just trying to clarify for my own edification.

A. When I say "send the itinerary" she doesn't send it until it's finalized.

Q. So, you don't get something like Commission Exhibit 5 until --

A. Immediately.
Q. Immediately?
A. Yes.
Q. In the initial request would they identify to you or to whomever is handling it in your office where the senator is going?
A. No, not usually.
Q. They would just tell you: We want a driver, or we need ground transportation in coordination with a flight to New York City?
A. Yes. Now, sometimes they would send the actual itinerary for our people to sign over, and then I call and say: I got your itinerary. I'm going to call down to the City and assign someone. Then, I call and say: The senator is coming down. I'm faxing his itinerary.
Q. So, you would not always get the same type of documentation from Senator Bruno's office; is that fair to say?
A. Most of the time it would be documentation very similar to this. (Indicating Exhibit 5) But if it's a last-minute thing they would either e-mail or call. And, then, we would -- I hate to use the words, but hook him up with the investigator from New York City that would be
handling that trip.

Q. Do you provide this information to the executive chamber?

A. This information?

Q. The information concerning Senator Bruno's ground travel, is that provided to the executive chamber in advance of the flight?

A. No. This part of it, no.

Q. I am going to show you a document that has been previously marked as Commission 's Exhibit 16. It's an e-mail dated May 17th. At the top: From William Howard to Darren Dopp. It appears to contain the same information contained in Commission Exhibit 5 concerning senator Bruno's approval, 12:30 in C.V. Starr; 3:30 in Sheraton, 9:00 a.m. scheduled return flight. And the date that Mr. Howard is providing this to Mr. Dopp is 5/17.

A. Um-hmm.

Q. Do you have any idea how Mr. Howard got that information on that date, none whatsoever.

Q. When Mr. Howard made the request to you on the 21st, is he seeking the same information, the same flight information, or was there another
A. No. I think this -- the 17th is the one that I think he is requesting for the prior week.

Q. Do you have any idea why Mr. Howard would be looking for in the itinerary, if he already had the information concerning Mr. Bruno?

A. I don't know.

Q. Did you provide the information to Mr. Howard in advance of providing him with Commission Exhibit 5?

A. Not to the best of my knowledge.

Q. Do you know if anyone in your office provided the information to Mr. Howard in advance of you providing him with Commission's Exhibit 5?

A. I can't say that. But I know I'm pretty sure I didn't give him the information.

Q. It appears from Commission's Exhibit 16 that he had the information in advance of you providing him the itinerary.

A. Yes.

BY MR. TEITELBAUM:

Q. Superintendent, do you know whether anybody other than yourself at the State Police was in communication with Mr. Howard concerning this
1 matter?
2 A. Nobody that I know of. But, again, at this
3 point the information contained in this --
4 Q. "This" being Exhibit 5?
5 A. Yes -- on the 17th, would not be something
6 that would have come to me. So, I'm assuming this
7 went to the First Deputy's office or the one
8 performing these duties. But I don't remember
9 providing him with that information.
10 Q. As a matter of course, were you the person
11 at the State Police who was Bill Howard's contact?
12 A. I was one of his contacts, me or Bart
13 Johnson, our Field Commander on Homeland Security
14 issues. Maybe Frank Christensen on an employee
15 relations issue. But, generally, it would be me
16 and, in my absence, Colonel Harney and in his
17 absence Bart Johnson, depending on the issues he
18 was dealing with.
19 Q. On the issue that we are now discussing,
20 would any of these other gentlemen be involved
21 with the information concerning the flights, to
22 your knowledge, concerning these facts?
23 A. Possibly Colonel Harney, but I don't think
24 -- this doesn't go through field command, so I
1 can't say.
2 Q. The information that went to Howard wasn't
3 from Colonel Harney in your judgment?
4 A. I can't answer that because I don't know
5 what, you know, what Colonel Harney has told him.
6 Q. If he had to communicate with the executive
7 chamber would he share that fact with you
8 normally?
9 A. It depends on what on what the issue was.
10 Q. On the issue of Senator Bruno's flight
11 schedules and itineraries.
12 A. He might; he might not. I'm assuming that he
13 probably would, but I can't say 100 percent that
14 he would.
15 Q. Do you know of any other situation in which
16 Colonel Harney was involved in providing
17 information concerning Senator Bruno's air and
18 ground transportation?
19 A. I know of no occasion where he provided that
20 information. What I'm saying here is I don't know
21 who provided this information. It could have been
22 provided on a number of levels. It could have
23 been provided by personnel in the City. I don't
24 know. I just don't know. I don't have any
knowledge that Jim Harney was provided with this information. I don't want to be unfair to Harney.

Q. I understand. In the normal course would Bill Howard, to use for lack of a better expression, leapfrog over you and talk to your staff?

A. There have been occasions when that has happened. Again, the Assistant Deputy Secretary to the Governor is a very powerful man in the eyes of the State Police. I probably would prefer he go through me, but that doesn't always happen.

Now, up until about a month ago I had an ongoing thing with the Deputy Secretary of the Governor, one of my troop commanders.

Q. Bart Gibson?

A. Yes. I now recognize that is something that is his right to do, and I think it has been a benefit for him to do that because he is learning how professional our agency is.

Q. Up until this point of the 17th, to the best of your knowledge, were you the only contact point in this matter for Mr. Howard? And I am just asking what you know.

A. To the best of my knowledge, since I don't
recall setting this trip up and did not send it to the City I cannot say. And I have to assume I am not the only point of contact.

BY MS. TOOHER:

Q. Were you aware of any activity or objection in the chamber to Senator Bruno using the ground transportation on the May 17th trip in advance of the July 1st article?

A. Was I aware of any --

Q. Objection by the chamber.

A. Objection; I can't say for the Spitzer administration, but --

Q. Specifically, the May 17th trip I am talking about.

A. The May 17 trip?

Q. Yes.

A. None that I know of. Just for that trip?

Q. Yes.

A. None that I know of.

Q. Prior to the request on May 21st, had you discussed the May 17th trip with Mr. Howard?

A. To the best of my knowledge, no. That was the first time that I can remember when he called and asked for what the itinerary was on the 21st.
Commission Exhibit 30 was marked for identification.

Q. I am going to show you what has been marked as Commission Exhibit 30: It's a one-page document for release dated May 17, 2007, a statement by Darren Dopp.

A. Okay.

Q. I'm going to ask you if in advance of the May 21st request you had seen this document.

A. No.

Q. And, would you agree that this document connotes a negative light to Mr. Bruno's May 17th trip?

A. (Pause) To me, I think you could draw a somewhat negative inference but, again, it's not a document I have seen before --

Q. I understand that.

A. -- or that I had any input to, so I can't --

Q. Do you know who Darren Dopp is?

A. He was the Communications Director.

Q. If you were aware of Commission's Exhibit 30, this document right here, would that have had any impact upon your response to Mr. Howard's request for the May 17th itinerary if you were
aware that they were putting together a statement for the media release?

A. That, I can't answer because I didn't see this. So, I can't --

Q. But, you have the document in front of you now. And if you were aware that the chamber was preparing a media release?

A. Can I ask did this actually go out?

Q. At this point we are still exploring that.

A. I can't comment on a document that I didn't make, or whatever.

Q. I'm not asking you to comment on the document. I am asking you to comment on your actions in responding to the request for Bruno's itinerary. Would this have had any impact upon your response to that request?

A. I would have to say probably not, because the documentation that I provided to Mr. Howard he is entitled to have.

Q. Why do you say he was entitled to have it? He told you he was responding to a FOIL request.

A. This whole executive travel thing is an executive committee function that they have dropped the duties of the air and ground on us. We
don't approve these. We don't disapprove them.

This is an executive chamber function. This is not something that we do absent their permission.

We don't provide travel for elected officials outside of the instructions of the executive chamber. This is not a normal police function.

Q. Do you seek executive chamber approval -- or did you seek executive chamber approval before allowing for ground transportation for Senator Bruno?

A. It had been approved. In the Pataki administration I wasn't sure. It was still -- that the Spitzer administration was fully on board with it, and I'm sure you will see in one of my e-mails me questioning whether we should continue providing that because, quite frankly, I thought it was something I should seek guidance on.

Q. Why did you think that?

A. Because it was not something that we provided for anybody else. And, two, it was again the type of thing that Pataki had approved. But in light of everything that went on recently with travel and vehicles and drivers for people, the Hevesi matter, I wanted to make sure I was on full
ground in providing my transportation. And as a
state agency I have to ensure our resources are
used appropriately. And I think it's reasonable
for me to ask that question.
Q. Did you get guidance, response to that
question?
A. They sent us -- they did send us what he is
doing, which I did.
BY MS. SULLIVAN:
Q. You mean the itinerary?
A. The itinerary, and you will see itinerary in
an e-mail.
BY MS. TOOHER:
Q. But you are talking now May 17th and 24th?
A. I'm talking the 23rd, 24th.
Q. You had been providing ground travel for
Senator Bruno throughout 2007; is that correct?
A. Yes.
Q. And you hadn't sought guidance before that
time; is that correct?
A. That's correct. However, the FOIL request
kind of made me say listen, maybe we should ask
about this. The one thing you will find with FOIL
requests and stuff like this is no elected
official wants his name in the newspaper. Take, for instance, since July 2nd, or whatever, whenever this article came out. Other than the Governor and Lieutenant Governor who normally fly on our aircraft, nobody has flown. The reason is when your name appears in the newspaper it makes them nervous. So, I wanted to be on firm footing.

Q. When you say you want to be on firm footing, what are you referring to?

A. Continuing to provide -- to make sure that the Spitzer administration wanted to provide ground transportation for Senator Bruno.

Q. And did you ever mention to Senator Bruno that there were questions concerning whether or not you should still be providing ground transportation?

A. No.

Q. Did you ever mention to Senator Bruno, hey, Senator Bruno, we're getting FOIL requests and there have been a lot of inquiries on the planes. I respect you. I would rather just give you a heads-up that people are looking at this.

A. I think, clearly, that would be inappropriate.
Q. Did you mention anything to Senator Bruno about a heightened level of review on the ground transportation?

A. Again, that would be inappropriate for me to release to the senator that records are being FOILed.

Q. But you had not received a FOIL request?

A. No. The chamber had received one, so it would be inappropriate for me to run and say: Hey, the chamber has a FOIL request.

Q. But you knew that there was this heightened scrutiny of the ground transportation?

A. I knew they were FOILing records.

Q. That they were FOILing the records of the State Police?

A. No. They were FOILing the travel records for the senator.

Q. Who was FOILing the records?

A. I think we have already established that you said it was Jim Odato and I said I thought it was the media.

Q. So, the media was FOILing the executive chamber and you were responding to that FOIL request?
A. Yes. I am sending documents, gathering documents as requested by my supervisor and sending the documents to him.

Q. And I think you testified earlier that you had never released Senator Bruno's itineraries in response to a FOIL request before?

A. To the best of my knowledge, that's true.

Q. And you didn't again return to Mr. Valle and follow up with him and ask if it was acceptable to now provide these as part of a FOIL request; is that correct?

A. That's correct. And my understanding was and my interpretation was that this is all part of one package.

Q. Had you gotten that impression from anybody?

A. No. That's my assumptions being in government for 25 years.

Q. Had Mr. Valle conveyed that to you?

A. I don't specifically recall if he conveyed that, but it was my understanding.

Q. Had you ever presented him with a ground itinerary before for review as part of a FOIL request?

A. Not to the best of my knowledge, no. At
that time, that is.

BY MR. TEITELBAUM:

Q. Superintendent, when you say that 30 was part of 28 -- was a continuation of 28 --

MS. TOOHER: Or are you are saying 5 was a continuation of 28?

Q. Yes, that 5 was a continuation of 28.

A. I'm not saying 5 is a continuation. I'm saying it's all one set of travel.

Q. I understand. So, this is my question. In doing a FOIL review and assessing whether a document should be released or shouldn't be released in whole or in part, in your mind what is the significance of the fact that the ground itinerary document was part of the documents relating to the air travel?

A. It's all one trip. It's the executive chamber telling us Senator Bruno is going to the City. Take care of him, for lack of a better way to put it. We fly the aircraft. We pick him up and take him to where he is going. He gets out of the car. He goes in. We stay in the car. He comes out and gets back in. We take him to the next stop. He gets out of the car, he goes in.
He gets back in and we take him to his next stop, take him back to the heliport, put him on the helicopter. Once his aircraft is airborne, we are done.

Q. Am I correct that in connection with a series of documents that might be requested under FOIL as a part of one transaction, in this case the flight from Albany to New York and continuation on the ground, some of it may be FOILable and some of it may not be FOILable?

Would you agree with me?

A. I would agree with that. We would look at that and make that determination.

Q. You would look at each individual page and say: Should we release this or not?

A. Yes. We would look at it, or the State Police would look at it.

MR. TEITELBAUM: Okay.

BY MS. TOOHER:

Q. You mentioned a moment ago that you received a subsequent request from Mr. Howard concerning Senator Bruno's travels. Can you relay that request?

A. As I indicated, there were two requests for
aircraft documents, and then there was a request for, I believe, three additional itineraries. I don't know exactly when they came in. I called down to New York City and asked them if they had them and they indicated they didn't have those three itineraries.

Q. And that's the next request that you recall receiving from Mr. Howard?

A. I believe so. Oh, actually, the next request is after I sent the senator requests travel on the 23rd and 24th -- on the 23rd and 24th. And, then, I sent an e-mail to Mr. Howard saying: The senator has requested travel. Do you want us to provide this?

Q. Why did you reach out to him at that point?

A. Because I wanted to make sure they wanted to continue with this process and that they were on board with providing travel to a single, pretty much a single senator; whether it was legitimate or not, basically.

Q. And did you have any reason to believe Senator Bruno's travel wasn't legitimate at that time?

A. Well, you know, the questions I think I had
in my heart were: Why do we do it for the senator
and not everybody else?

Q. But, did you have any reason to believe
Senator Bruno's travels were not legitimate at
that time?

A. What do you mean by "not legitimate"?

Q. I think a moment ago you said that you were
concerned about the requests or the travel not
being legitimate.

A. The process of us handling a single person
when we are not pretty much authorized outside an
approval by the executive chamber to handle that.
You know, we provide travel and protection for the
Governor; that's part of our duties. We provide
travel and protection for the Lieutenant Governor;
that's part of our duties. But it is not a State
Police duty to protect elected officials outside
of a compelling reason to do that. And,
generally, the compelling reason is there is a
threat imminent against their life. So, outside
that we have no real compelling reason to provide
that transportation.

Q. And you were just providing transportation,
not protection?
A. Transportation, yes.

Q. And that had been previously allowed or authorized -- I will use your word -- during the Spitzer administration in January, February, March, April, and May; is that correct?

A. Yes.

Q. And had you received any indication that that authority had been withdrawn?

A. No. But, as I said earlier, obviously there is this FOIL request hanging out in the executive chamber. I think as a reasonable person and agency head it is incumbent upon me to ask this question: Do you want us to continue doing this? I don't want to get into an Allan Hevesi situation where they come back and say: You used the resources inappropriately.

Q. Did you have any reason to believe that Senator Bruno was using state resources inappropriately?

A. I did not, no. But the question of providing the travel to him when you provide it to no one else, and it's not our duty to provide that travel is a question that I think needs to be asked because they are state resources.
Q. And did you ask that question of Mr. Howard?
A. Yes. I asked: Do you want us to continue providing transportation to Mr. Bruno?
Q. But did you ask if this was an inappropriate use of state resources of Mr. Howard?
A. No. But I think the question itself would, you know, beg a reasonable person to ask that question for themselves: Is this an appropriate use of State Police resources?
Q. But did you ask Mr. Howard: Is this an inappropriate use of state resources, or did you relay to him: This might be an inappropriate use of state resources.
A. No. I asked does he want us to continue.

BY MS. SULLIVAN:
Q. What did Mr. Howard say?
A. He then requested the itinerary for Senator Bruno for that trip.
Q. Do you know if Howard conferred with anybody on the executive chamber on your question?
A. I don't know.
Q. Did you confer with Michael Balboni?
A. I don't know.

(Commission Exhibit 31 was marked.)
Q. I am going to show you what has been marked as Commission Exhibit 31, and ask you if this is the e-mail that you sent to Mr. Howard.

A. Yes.

Q. You indicated a question as to whether or not you should provide the transportation.

A. Yes.

Q. And you indicate, due the same documentation we previously talked about for this trip.

A. Yes.

Q. What documentation is that?

A. The flight information and the itinerary.

Q. When you say you previously talked about this, when did this conversation take place?

A. This is the conversation when he first called and asking me for the flight manifests and stuff like that.

Q. So, you had a conversation about the flight manifests similar to Commission 28?

A. Yes, not --

Q. Did you have a subsequent conversation about the individual itineraries?

A. No. When he first called, that is what I am referring to: Do you want us to send you this
package for this trip.

Q. Commission 28?
A. Yes.

Q. You are asking him if he wants the flight manifest information for this trip?
A. Yes.

Q. Are you referring to any other documentation?
A. No.

Q. And you indicated that you reached out to him immediately upon receiving the request; is that correct?
A. I would say yes because this just received another request.

Q. You did receive a reply from Mr. Howard?
A. Yes.

Q. Do you recall what that reply was?
A. If I remember correctly, it was something about: Fax me the itinerary or send me the itinerary. And I think my reply was, "I don't have the itinerary yet."

Q. And, were you aware that Mr. Howard was communicating with anyone else on these itineraries?
A. Not that I know of.

Q. And what was your understanding as to why he wanted this information?

A. To see if he wanted to approve the trip.

Q. To see if he wanted to approve the air trip?

A. No, to continue with us providing ground transportation.

(Question clarified)

(Question continued)

A. Okay.

Q. That is your original e-mail to Mr. Howard and then his response to you: "Could you call me with the details?" And your response to him is that you don't have them yet. It's just an inquiry on whether he can get transport. Is that correct?

A. Yes.

Q. Was Mr. Howard responsible for approving of the trips in the executive chamber?

A. That, I don't know. But he was my contact in the executive chamber. He was the person that I reported to in the executive chamber.
Q. You are looking for him to approve the ground transportation?

A. Looking for him to approve the ground transportation, willing to give me guidance on whether we should do the ground transportation.

Q. Had he said anything to you previously about not providing ground transportation?

A. No, he had not. But, again, all that's going on --

Q. By "all that's going on" you mean the FOIL request?

A. For the chamber, yes. I wanted to make sure that Preston Felton is on firm ground.

Q. Your understanding is that this information you are providing to him is in furtherance of the FOIL request?

A. Yes.

Q. And, did you relay to Senator Bruno that you thought there was some sort of heightened review of travel requests?

A. No, I didn't. That would be inappropriate on my part.

Q. To relate to Senator Bruno that you are looking at these travel requests carefully?
A. Yes. I think it would be inappropriate for an agency and for the Executive Department to release to another section of government, you know, they are handling a FOIL request. That's right.

Q. I thought you just testified that you were concerned about the propriety of continuing this practice.

A. For us. But I'm not going to violate the confidence of the executive chamber. That is, you know --

Q. If Mr. Bruno had sent you a ground transportation -- have you ever denied him a ground transportation request?

A. To the best of my knowledge, we haven't. But, again, I have not received all of them, so I can't say.

Q. Have you set standards for reviewing the ground transportation requests in terms of granting them or denying them?

A. I believe the request or the way that was first set up with Superintendent Bennett was that we would approve any ground transportation connected with a flight that was state business.
If it was not state business the senator would have to reimburse the State Police general fund for that as personal business.

Q. And had you been notified of any change in that policy?

A. No, I hadn't.

BY MR. TEITELBAUM:

Q. Superintendent, if it were the State Police that had been the recipient of a FOIL request for Senator Bruno's ground itinerary do you think it would have been inappropriate under those circumstances to call Bruno's office and say: Do you have a position on whether you want this to be released or do you think that this document contains personal information you prefer not to release or might contain security information, that might contain a personal --

A. Well, I think it would be inappropriate.

Q. Why is that?

A. We have to make a determination. It's a win-lose situation for us. If we -- Say we call the senator and he says don't release the information. And, then, the newspaper or whoever comes back and says we say we can't release the
information because Bruno said not to release the
information, well, the problem I have with that is
how does Senator Bruno -- I mean he may very well
be trying to prevent information that the public
has a legitimate right to know, how State Police
resources are being used from getting out there.
You know, we answer to people. It really doesn't
matter to me, you know, that he goes to New York
City. If he's on official State business, fine.
It doesn't matter to me in the least. But the
problem is the public has a right to know this
information, and attempting to cover up that
information is not a good thing.

Q. I understand that ultimately a FOIL request
to the State Police requires a determination by
the State Police as to whether to release the
documents or not. My question goes to whether you
think it is inappropriate to solicit information
from the senator. And let me give you an example,
simply a hypothetical. If the senator told you:
I don't want the name of the restaurant where I
eat with my family after I do -- whatever he does
-- because if people in the media know where I am
having dinner and find out I am traveling to New
York they tend to show up at the restaurant and it's a bother. Do you take that into consideration?

A. I would not take that into consideration. And, again, the reason is the senator is using state resources. If you use state resources it generally means you are doing state business. And the fact that you would go to a restaurant is a fact of life as you do state business. That's not a secret. Believe me, over the last three months I have shown up at a lot of places where the press shows up, and I would have preferred they had not followed me there. I can't prevent that. I'm on State Police business. The public has a right to know.

Q. Did you release information to the public with respect to when the Governor eats in a restaurant with his family, or did you delete that? Redact it, I mean.

A. The Governor is a security issue. We do not provide security to Senator Bruno. And the Governor, as far as I know, is a very open person. But we would probably say on that, that's a security issue.
Q. Why would that be a security issue?

A. Because he is the Governor of the state. He has a security detail. It's our job to protect him. It makes it that much harder. But I can't speak for Governor Spitzer because I have never worked security for him before. But I can tell you for Governor Pataki who I did on occasion work security for, many times on his public schedule he would show up at events and he was eating and there would be reporters there. It's a fact of life, public life. You were doing the state's business. People are going to want to know what you are doing.

Q. Sir, if I understand you correctly, the fact that a public official receives a security detail from the State Police in your mind would determine whether information such as where the restaurant is would be released under a FOIL request or not?

A. It may not be the single or sole issue. But, again, we would look at it on a case by case basis to make that determination. But I think the glaring question here that you asked, Mr. Teitelbaum is would I release to Senator Bruno and give him the option of saying what is to be
redacted from the State Police record. When he avails himself of our services, State Police resources, unfortunately he has to take all that goes with that. Part of what goes with that is the right of the public to know.

Q. I didn't ask you whether Senator Bruno had the option to veto release. The question was: Rather than your input from the Senator concerning, for example, whether an issue might exist with respect to disclosing where he ate his dinners --

A. Well, I think he has to call us and say: Listen -- maybe this would be a better scenario. If he called and said: Superintendent, I have been getting threatening phone calls at my house. I am concerned. Would you now do something different? Of course, I would, because he is getting threatening phone calls that could lead to something more, and I have a responsibility to protect him like I do every citizen. But, again, when you avail yourself of resources issued by the state, you have got to take all that goes with it.

Q. Privacy does not get implicated?

A. Privacy does get implicated. And I can tell
you that we have had FOIL requests when we looked
at stuff on other people and refused to release
certain documentation because of privacy rights.
We do that. But the fact that he uses a state
helicopter, flies to New York City and then uses
State Police transportation to go to an event is a
public matter and the public has a right to know
he is using state resources.
BY MS. TOOHER:
Q. I am going to show you what has previously
been marked as Commission Exhibit 17, an e-mail
from Jeannette Ricardone to Anthony Williams dated
May 21, 2007 with regard to providing
transportation. Who is Jeannette Ricardone?
A. She is the secretary to the First Deputy
Superintendent.
Q. It appears from the content of this e-mail
that this has been forwarded to Troop New York
City for transportation to be provided to the
senator?
A. Yes.
Q. Would that be correct?
A. Yes.
Q. Did you approve forwarding this down to
Troop New York City to provide transportation for the senator?

A. Not to the best of my knowledge, no.

Q. Who would the request have come into for ground transportation for the senator?

A. Generally, it would come in to, now, Jim Harney to approve or not approve.

Q. Who would it have come in to on 5/21?

A. Jim Harney.

Q. How were you made aware of the request?

A. I don't know that I was ever made aware of this request.

Q. Well, you sent an e-mail to Bill Howard and discussed Commission's 32 a moment ago saying you received another request from the Senator for ground transportation.

A. I think that was a May 23rd trip. Was there a May 23rd trip?

Q. 24th.

A. Okay. Then, I would assume Jeannette probably told me about it.

Q. So, did you approve the ground transportation?

A. Again, this was the trip that I asked for
1 guidance from Bill Howard.
2 Q. You sent the e-mail to Mr. Howard at that
time, 4:14?
3 A. Yes.
4 Q. And 4:16 Jeannette Ricardone is e-mailing
this down to Anthony Williams to provide
transportation. Had you approved that action?
5 A. No. That would be our normal way of doing
things. I would say the fact that I didn't
disapprove it, she just sent it down.
6 Q. But you had a query with the executive
chamber as to whether or not it should be
approved; is that correct?
7 A. Yes.
8 Q. And did you alert Ms. Ricardone to your
inquiry with the executive chamber?
9 A. I don't know. I don't recall.
10 Q. But she apparently went ahead with the
normal protocol and sought to have drivers
assigned for Senator Bruno?
11 A. Yes.
12 Q. Did you relay to anyone in your office that
you were questioning whether or not you should
provide transportation to Senator Bruno?
A. Possibly Jim Harney, but I can't be sure.

Q. Did you relate to anyone in your office that you were providing documents in response to a FOIL request from the executive chamber to Bill Howard on these trips?

A. To Mr. Valle.

Q. That was on the manifests?

A. On the documents being FOIL requested.

Q. I just want to be clear. You spoke to Mr. Valle on the manifest. You didn't speak to him on any other documents that you provided?

A. Yes. And both of my secretaries would have been aware of it.

Q. But you didn't in any way delay transportation for Senator Bruno?

A. No.

Q. And did you ever receive a response from Mr. Howard telling you not to provide transportation to Senator Bruno?

A. No.

Q. And, to your knowledge, did you provide ground transportation to Senator Bruno on May 24th?

A. To the best of my knowledge, yes.
Q. Did you have provide any further information
to Mr. Howard concerning ground transportation on
the 24th?
A. I think I sent him a copy of what -- I
believe it was Anthony Williams sent us the
schedule. And, then, there was a change like a
day or two before, and I sent him that there had
been one change in the schedule.
Q. So, you sent the changes in the schedule to
Mr. Howard as well?
A. Yes, on that one occasion I sent the change.
Q. That was in advance of the trip?
A. Yes.
Q. And did you send him the itinerary from
Senator Bruno's office?
A. I don't believe there was an itinerary from
Senator Bruno's office.
Q. Did you request an itinerary from Senator
Bruno's office?
A. I didn't. But, then again, I didn't handle
it. This was a separate trip.
Q. But, you were in constant contact with Mr.
Howard about this trip?
A. I wasn't in "constant contact." I sent Mr.
Howard an e-mail asking: Do you want us to provide this transportation. And, then, he sent back the request: Get the itinerary. And I sent that to him. This was not a constant contact. This was once, and there was an update and I sent that to him.

Q. But you didn't have an itinerary from Bruno's office on this trip, I think you said a moment ago.

A. I didn't have like a document like this.

Q. Commission 5?

A. Commission 5, yes.

Q. I am showing you what has been marked as Commission's Exhibit 33.

A. Yep.

Q. And it's an e-mail from you to Anthony Williams dated May 23rd at 9:42. It starts with:

Fax me up the latest itinerary on the subject from up here J.B. for the trip that they called about yesterday. Can you identify this document?

A. Yes.

Q. Can you tell me what it is?
A. It's the e-mail from me to Anthony Williams.

I say: Fax me up the itinerary. He says: Sorry about the delay. I was out yesterday. That's on the 23rd. And I say, "Okay."

Q. And, "I am awaiting the schedule from his office." Do you know what he is referring to?

A. That's got to be the itinerary.

Q. Had you spoken with Anthony Williams about this itinerary?

A. No. This was by e-mail.

Q. You didn't have any direct communications with him?

A. Not that I know of, because he was out on the 23rd, or whatever.

Q. Was there any follow-up on this?

A. The e-mail.

Q. Was there any subsequent follow-up?

A. The e-mail.

Q. To this e-mail.

A. Oh, none that I know of. But I mean there could be.

Q. Did he send you up the documents?

A. I think he sent me up like an e-mail with itinerary, as I indicated earlier, if that's the
(Commission Exhibit 34 was marked for identification.)

Q. I am going to show you what has been marked as Commission's Exhibit 34 and ask you if you can identify this document.

A. Yes.

Q. And what is this document?

A. This is an e-mail that I sent to Bill Howard, again, in response to his saying: Send me the schedule which his response to me saying: Do you want us to provide transportation? And this him saying -- He says, "Schedule of events is as follows." This is the e-mail I was talking about.

Q. I note that the original thread on this is from Anthony Williams, May 23, 2007 as per Leslie, "J.B. office schedule is as follows. And, "This was given to me over the phone." Is there a reason that he would make note of that?

A. I don't know. You'll have to ask him that.

Q. The next thread in the e-mail from you to Mr. Howard, "Forward schedule. FYI: No hard copy on this."

A. No itinerary.
Q. Is there a reason that you would provide that information to Mr. Howard?
A. Because he had asked for the itinerary schedule. I wanted him to know this is what he was going to be receiving and I wasn't going to be faxing him another document.
Q. You were telling him there was no itinerary; is that it?
A. On this, yes.
Q. And Mr. Howard continues this e-mail to Darren Dopp, the Communication Director. Were you aware that Mr. Howard was forwarding this information to Mr. Dopp?
A. No.
Q. But your understanding is that Mr. Howard's request are in pursuit of a FOIL that is from the executive chamber?
A. That is the knowledge I had. And, my understanding, that's what I was operating under.
Q. That you were providing him information in response to, or in furtherance of, a FOIL request that was in front of the executive chamber?
A. Yes.
Q. Did there come a time when you had
additional communications with Mr. Howard on Mr. Bruno's schedule?

A. I think the only other one was a trip in June. He called and asked me about a trip in June. And I forget the date of it.

Q. Did you have further conversations with Mr. Howard concerning itineraries for Mr. Bruno's trips?

A. Yes.

Q. And, when did that occur?

A. I don't know the exact date, but at some point he had called and requested three specific itineraries for trips that Senator Bruno had taken.

Q. And do you recall what those itineraries were for?

A. For the three trips. And I don't recall what the dates were.

Q. How did he request that information?

A. I believe that was over the phone.

Q. And do you recall what he said to you at that time?

A. He wanted the three itineraries. He gave me three dates and he wanted them faxed up to him.
Q. He wanted them faxed up to him where?
A. To Mr. Howard.
Q. So, when you say he wanted them faxed to him--
A. Most of the documents were faxed.
Q. Most of the documents you have provided to him?
A. Yes. They were faxed. I didn't physically take them down there.
Q. What did you do in response to that request?
A. I called to the City. If memory serves me correctly, I spoke to Major Kopy and had him check for the three itineraries. And he indicated that they did not have the three itineraries. I got off the phone and called Mr. Howard and said they don't have the three that you are looking for.
Q. Was there a practice in the State Police of keeping the itineraries?
A. Unbeknownst to me, a senior investigator before Anthony Williams -- I think that was Kevin Smith -- kept all the itineraries.
Q. But at the time that Mr. Howard made his request were you aware of any practice in the State Police of keeping the itineraries?
1 A. No.
2 Q. I am going to show you what has previously
3 been marked as Commission's Exhibits 22 and 23.
4 A. Okay.
5 Q. Specifically, I am going to direct your
6 attention to Commission Exhibit 22, and note the
7 date on the bottom of that, May 3, 4, and 24. Are
8 those the dates that Mr. Howard was looking for?
9 A. Possibly.
10 Q. Can you identify these documents? Are you
11 familiar with this document?
12 A. This is a State Police fax transmittal form
13 from Kopy to the Superintendent. And this is the
14 document that Kopy faxed up to me later that day.
15 It was after I told Howard we didn't have the
16 documentation, the itineraries. He called back
17 and said, well, do you know what your people did
18 that day? And, then, I called Kopy and said,
19 "Mike, what did our people do that day?" And he
20 said, "I will interview the people and find out."
21 And, then, he called me back and said, "Okay.
22 I've got it." And I said, "Okay. Document it and
23 send it up to me." And this is the form that he
24 sent to me.
Q. And, these dates on Commission Exhibit 23, May 3rd and 4th, May 17th and May 24th, are those the dates that Mr. Howard had relayed to you?

A. Again, I'm not positive of the dates, but here it says May 3rd, 4th, and 24th. Here it is May 3rd, 4th, and then they have got May 17th and they have got May 24th.

Q. When you received this request did you consider it responsive to your request to Major Kopy?

A. Yes, I did.

Q. And did you forward that to Mr. Howard?

A. Yes.

Q. And what happened next?

A. A short time later he called back and he said, "Can you have these put on a separate piece of paper, each one?" And I said, "I can do that. But understand, these are not Joe Bruno's itineraries. You want it that way, fine. But these are not his itineraries, so if you are doing this as part of a FOIL request, it shouldn't be part of a FOIL request.

Q. You specifically recall saying that to Mr. Howard?
A. Yes. I said, "This is what our people say they did on this day."

Q. And did you discuss with Mr. Howard at that time that you had already provided him with the information for the 17th and 24th?

A. No. But he knew that. He had this form.

BY MR. TEITELBAUM:

Q. When you say "this form," Superintendent, just for the record, what is the number on it?

A. 23.

BY MS. TOOHER:

Q. He also had your prior e-mail and the prior itinerary, Commission Exhibit 5 and Commission Exhibit 33. I believe it's 34; I apologize.

A. Yes. He should have had those, yes.

Q. Did you ask him why he is requesting this information again?

A. No.

Q. Did it cross your mind that he was requesting the same information yet again?

A. It didn't cross my mind. But, you know, I wanted to make sure this was not the senator's schedule or itinerary.

BY MR. TEITELBAUM:
Q. When you say "this" you are talking about --
A. 23.

MR. TEITELBAUM: Thank you.

BY MS. TOOHER:

Q. So, what did you do next?
A. I called Kopy, told him to put it on separate pages. He could either fax it or e-mail it up to me. And, then, a short time later he e-mailed it up and I forwarded the e-mail to Mr. Howard.

Q. You forwarded the e-mail to Mr. Howard?
A. Yes.

Q. And, the e-mail that you received from Major Kopy, had it placed the document on separate paper?
A. Yes.

Q. And I am going to take you back to Commission 23 and indicate that there are handwritten notes on the bottom of 23 which indicate separate pages, trips for Senator Bruno on bond paper. Major Kopy testified that those were your directions to him. Do you recall giving him those directions?
A. I would say they are probably accurate that
I gave it to him that way, yes.

Q. Were those the directions you received from Mr. Howard?

A. Howard says "separate pages" and "these three separate trips to bond paper" might have been me.

Q. When you say "bond paper" if this was being e-mailed to you, what does the bond paper reference?

A. The single sheet of white paper. You know what I'm asking you. Do one page off a word document or Word Perfect document.

Q. How is that different from separate pages?

A. I have never thought about how it's different from separate pages. Bond paper it's just what you put it on.

Q. But you were having Major Kopy e-mail this to you?

A. Not this, the three separates documents.

Q. The three separate documents to you, and they were -- you were going to e-mail that to Mr. Howard?

A. Yes.

Q. So, how is it going to be put onto paper?
A. It's not. It's going to be put in a FOIL, then be put on bond paper. It's going to be put on a file, into a file. My recollection is to e-mail it to me. If he had faxed it to me, you would have had to put it on bond paper to do. You have to put it on something.

Q. What does bond paper mean to you?
A. A single sheet of paper; clean, white.

Q. It just is a separate white copy the page.
A. Yes. Like at one point, this was bond paper. (Indicating)

Q. The trip for Senator Bruno, what is that?
A. I don't know.

Q. You indicated he wrote those as a consequence of direction from you?
A. Again, I can't -- I gave him directions but I don't know why he put the trip for Senator Bruno -- "no."

BY MR. TEITELBAUM:

Q. Superintendent, up until this point your testimony has been that in your mind what you had been asked to do was in connection with the a FOIL request in the executive chamber; is that correct?
A. Yes.
Q. Now, you are being asked to do something which you have testified was not a FOIL document?

A. Yes.

Q. I would like to know what is going through your mind at the point in time that you are being asked to do something that is not a FOIL document anymore?

A. I was not positive that he knew it was not a FOIL document. But I wanted to be sure it was clear; that this wasn't Senator Bruno's itineraries that he is asking us to do. This is what our people said we did. He asked us to retrieve the information. The information is obviously lost, but as our supervisor can ask us to try to retrieve the information, sometimes we can do it. Sometimes we don't. I can't say it's lost, you know. We can't retrieve it, so don't call us anymore. We have to make an attempt.

Q. So, you are giving him a heads-up that this is not a matter of a FOIL document. You are giving a heads-up?

A. In my opinion. And I think the other thing is that this is not, you know, when Bruno sends the itinerary. It's part of this executive
chamber travel, a branch, whatever you want to
call it. It's not a formal State Police
documents, you know. It's not made by us, so it's
not our document. The theories are not normal,
this is not something you know that we use. It's
something that the chamber requested us to do.

Q. Up until this point of the request,
everything else in your mind were documents that
were within the realm of FOIL?

A. In my opinion, yes.

Q. Now, you have a document that in your
opinion is not within the realm of FOIL; correct?

A. Yes, sir.

Q. And you point that out to Mr. Howard;
correct?

A. Yes.

Q. And, Howard, says, I suspect that he wants
the documents provided to him; is that correct?

A. Yes, sir.

Q. In your mind, what do you think is going on?
Be frank with us.

A. I didn't know what was going on. But,
obviously, my mindset at the point is that it had
a reduced somewhat of -- some discomfort in me
that I made sure I clarified what this is and what
this is not.

BY MS. TOOHER: No.

Q. Did you express to Mr. Howard hat you had a
level of discomfort concerning this document?

A. I wouldn't say I specifically expressed
that, but I think me saying -- understand this is
not the senator's itinerary. This is, you know,
what you asked for. You can't use it for FOIL.

If someone said that to me, it would be clear
that, you know, it shouldn't be used like that.

Q. When you communicated this to Mr. Howard
what did he say to you?

A. I don't recall him saying much of anything,
other than, you know, send me the document. I
have known Bill for ten years. We communicated.
He knows me; I'm a fairly quick person on the
phone. I have got a lot of stuff to do. He likes
to chat somehow, et cetera. It's in his mind that
I'm a history buff. I don't care about history;
I'm worried about the future.

Q. Understand the question. I am not going to
ask you as to leading to any aggravation at all.
Did it occur to you at that point that there may
be a political agenda in existence and this document was being prepared and conveyed to the executive chamber in connection with a political agenda.

A. That didn't occur to me. But I will tell you what did occur to me is that because they had asked some other questions about flight costs and stuff -- and I think it was they wanted the senator to pay for some flights. That was my thinking.

Q. Okay, I understand. An e-mail: What does it cost to fly a helicopter? We know what it is. I'm trying to think of -- it's the fixed cost versus the overall cost. There's two different costs. One is what it actual costs to fly the helicopter and another cost: What does it cost per year to keep the helicopter in operation.

There are fixed costs. One is much higher than the other. We figured it's what does it costs for us to pay for the hangar and pay all the mechanics and stuff.

BY MS. TOOHER:

Q. Weren't those inquiries in relation to the Governor's flights?
A. It was in relation to not necessarily the Governor's flights, but flights in general. This all happened pretty much together. So, truly, that's what I thought it was; that they were going to ask him to pay for the flights.

(Q. I am going to show you what has been marked as Commission Exhibit 35, which is a screen print of an e-mail. This appears to be from Preston Pelton to William Howard on June 6, 2007 with three attachments, and ask you if you can identify this document.

A. Yes. This is what I am saying. This is the three things that he requested. This is what I'm talking about. And in my memory I can remember seeing this at the computer.

(Q. I am going to show you Commission Exhibits 1, 2, and 3 and give you a moment to look at them and ask you about those documents that are attached to this e-mail.

A. To the best of my knowledge, I don't rightly remember opening those up, but these are the three documents, or I'm assuming these are the three...
documents. I might have opened one of them up, whatever.

Q. You are saying you didn't look at the documents before you sent him to William Howard?

A. Like I said, I don't remember opening those up. I remember seeing these at some point because I remember the times on the bottom approximately.

Q. In your e-mail it says "See attached." I know it's a little hard to read.

A. Yes.

Q. There is no notation here concerning any limitations on the application or use of these documents?

A. No. That was done on the phone verbally.

Q. Did you do that before you sent the documents to Mr. Howard?

A. I think I did that when he asked for the documents.

Q. When he originally asked for the documents?

A. When he said: Put them on three separate sheets of paper, that's when I told him that information.

Q. And you are clear that when he got these documents, these being Commission's 1, 2, and 3
and the e-mail of Commission 35, he understood
that the documents that were being sent to him
were not accurate itineraries and that you had
instructed him -- you didn't believe they were
suitable for FOIL?

A. I didn't believe they were suitable for
FOIL. I can't tell you what he understood. I can
tell you what I told him. It should have been
crystal clear, but I can't tell you he understood
that. That is -- I am assuming he understood
that, but I can't tell you that.

Q. And Commission Exhibit 5, which is the
itinerary from Senator Bruno's office, did you
give a similar limitation on this document when
you provided it to Mr. Howard?

A. No, because this is the actual document.
You know, this is an authentic document in our
possession. These, at his request.

Q. "These" being Commission 1, 2, and 3?

A. Yes. These by request were produced by us
to say what our people did. These are different
than these. These are not authentic, whatever you
want to call them. This is a synopsis of what our
members did on those dates. These are two
separate things. And I want to make sure he knew that, you know, that it's clear that this document is different from this document.

Q. Commission 5 is different from Commission 1, 2, and 3?

A. Yes.

Q. Following your transmittal of Commission 1, 2, and 3 to Mr. Howard, did you provide any further information to Mr. Howard concerning Senators Bruno's schedules?

A. I think he requested it in late June, one other trip. I want to say it was the 27th or the 28th.

Q. What was his request in that regard?

A. Pretty much the same thing, the itineraries and the flight records.

Q. And what was your response?

A. My response, I remember sending him the itinerary that our members -- again, it was unavailable and our members had synopsized in another document what they did. I remember sending it to him. I remember discussing it with him. And, if I remember correctly, it was a trip Mr. Senator Bruno had scheduled two stops, one at
some event and another one at city hall. It might
have been a meeting to meet with Mayor Bloomberg.
But I remember discussing it with him. And what
happened is that the senator had cut the trip
short and he asked me if I knew why the senator
had cut the trip short. It's just so happened on
that day I was headed to Long Island. A bad
rainstorm moved in, and my explanation to Bill was
he probably cut it short because the pilot told
him a weather front is moving in and we have got
to be out of here by a certain time. And we
discussed that, and I said, "Bill understand that
no pilot who works for me is going to leave a $10
million ship on a barge in the middle of
rainstorm. So they know if he's not back in time
for them to the get the ship out of there, he's
not. So, the senator cut the trip short, skipped
the meeting at city hall, and came back to the
ship so he could get out of there. But I remember
that day because I was on the way to an event in
Long Island myself. And, at one point I could
barely see to drive.
Q. I am going to show you what has previously
been marked as Commission Exhibit 4 and ask you if
Q. When you relayed that document to Mr. Howard did you have any limitations on that document?

A. I believe I put the same limitations that I put on the other three. This is what our members say they did on those days. This is not an authentic itinerary of the senator. It's just not -- it shouldn't be used to represent this as his itinerary because this is, you know, from our members' memories or notes or something. And I don't want anything in here that is wrong.

Q. So, you provided this information with the same caveat; that this wasn't appropriate to be produced in response to a FOIL?

A. Yes, FOIL.

Q. I am going to show you what previously has been marked as Commission's Exhibit 24. It's an e-mail to you from Thomas Marmian that is relaying the information?

A. Yes.

Q. How did you receive Commission Exhibit 24?

A. I'm not sure if this was annexed to this, but they came up pretty much about the same time.
Q. And was that also forward to Mr. Howard?
A. I think this was forwarded to Mr. Howard. I don't know if that was.
Q. By "this" you are saying Exhibit 4, the transportation --
A. 24, I don't know that this was.
Q. You believe commission 4 was forwarded to Mr. Howard?
A. Yes.
Q. But --
A. I can't be this one.
Q. That Commission 24 was forwarded to Mr. Howard?
A. Yes.
Q. And, did you, in your e-mail in any way caution Mr. Howard?
A. That, I don't know. That, I don't know.
Q. Mr. Howard testified before the Attorney General that you never told him that these were recreated documents. He also testified that he never gave you any direction concerning the creations of this document.
A. Of which document?
Q. Commission 1, 2, 3, and 4.
Q. And he was asked: Did you direct the Acting Superintendent to produce any documents in connection with the FOIL request?
A. It was not a direction. I was very adamant about that. It was not a direction for him to produce those documents. So, when you spoke to the Acting Superintendent you said Darren Dopp had contacted me and it was a FOIL request.

Q. What was the nature of your request?
A. It was advising him we had gotten a FOIL request.

Q. You were not requesting that he do anything?
A. No, not really.

Q. Your testimony here today is that he specifically directed you to create these documents to place them on separate sheets of paper?
A. Paper.

Q. And to send them to him in that fashion.
A. That is my testimony. And, if I may ask a question, I -- if he had in his possession -- I'm trying to think of which is the document with the
three trips on one sheet.

Q. Commission 23?

A. If he has this in his possession, why would I -- because this satisfies his original request. Why would I take it upon myself to go and to have our people do work that they have already done.

BY MR. TEITELBAUM:

Q. I understand your point.

A. That is my point. My belief here is I don't believe I did anything wrong. I don't have any reason to lie. So just this fact on why would I do that?

Q. Commission Exhibit 23, I believe you indicated you e-mailed this to Mr. Howard?

A. No. I think this was faxed to him.

Q. It was faxed to him?

A. Yes. I believe this was faxed to him.

Q. Superintendent, you said in your September 9th submission to us --

A. Yes, sir.

Q. -- Mr. Howard was, as far as I know, an operations guy and not a political operative." Do you still stand by that given, in retrospect, with all that has happened here?
A. I have to stand by it. And these are my reasons why. I have known Mr. Howard for approximately ten years. I met him shortly after Superintendent McMahon requested that I go to our protective services unit. They were having some issues. The Superintendent knows my reputation, knows I am very good at getting all the ships sailing in the right direction. So, I have known Mr. Howard from that point. I have been working with him over the years. I had seen him manage disaster after major incident, our response to Katrina, all of those things. He was when I first came into my dealings with executive chamber. He was the Deputy Director, I believe, in operations. Subsequent to that, he was made First Deputy Secretary of the Governor -- he eliminated the position of director of operations at the time Mr. Natoli. After about two and a half years at the mansion I left and went to New York City. Shortly after leaving New York City I'm sure you are aware events of 9/11 happened. I was kind of called back into it and spent long hours with the Governor's people working. I was called back into service a number of times to fill in. I have never
known him to be a political guy. I'm not a political person. To the best of my knowledge, I have never been to a political event. I do not donate to political candidates. And I have friends who are sheriffs, and stuff. Just early this week I was invited to something, and I told him I don't do that. It's not my style. I have seen nothing up to this event to say he was a political guy. But the other thing is that he comes out of a Republican administration into a Democratic administration. And I don't know what party he is, but it would be unfair to characterize him other than as I know him. I think here, Howard and/or somebody else has drug the State Police into the middle of this. It's an unfortunate event. We are not political people, but he has to be responsible for his actions. Things that I testified to here that I did, I did. You are not going to see me bobbing and weaving. He asked me to put the things on three pieces of paper. He's my supervisor -- I ask a question like this. On what basis can I tell him, hey, this is a check /PWAEUPL /KHER person. On what basis can I tell him I'm not going to show you
these records. Or, I'm not going to show these records. I can't think of a basis so the answer to your question is I don't know what he is, but I know from my dealings with him, he was always an operations guy. He never struck me as a type of political --

Q. Prior to this episode?
A. Prior to this episode.

Q. Now, I want to focus on this episode. You said, and I think you testified to this before, so it's absolutely consistent. You said the State Police was dragged into the middle of this. I want to get your frank assessment. The statement was that the State Police was used to political purposes. I am not saying you. I am not saying who, but I want to know because you are the Chief Executive in the agency whether, in retrospect, looking at the course of events that occurred, you believe that the wall that is supposed to exist between politics and State Police was inappropriately penetrated.

A. I am of the opinion that even starting with this -- Now, we know Senator Bruno is using our people to drive him to political events. That is
clearly inappropriate to me. There is no way around that. Had he called me and said: I want you guys to drive me. I have got a Republican Dinner and whatever, so absolutely not. But they apparently dressed it up nicely, so it looked like you know, it was official states business. And believe me -- but, as far as them bringing us into this, it is tough for me to say. But it's in the back of my mind me thinking Exhibit, clearly we have been drug into a political firestorm here. There's no way to dress that up. The question. Is: Was it intentional or not intentional? I don't have enough information now to answer that question. I can tell you that I am very upset that we are in the middle of this because it is not the way I operate. It's not the way we operate. We are apolitical. Every so often we will get a trooper who gets involved in politics unbeknownst to us, and they are disciplined in no uncertain terms. We believe you have the right to vote but not to get any more political than that. If we get guys on our Governor's detail we think are getting to do these: Hey, time to go Glen Miner. The State Police regulations prohibit
political involvement but do grant the right to vote.

Q. You look back and see what happened to the documents that you have provided and say: Does that affect your perspective as to whether the State Police has been used politically?

A. I think this is a possibility.

Q. The fact that you are told there is a FOIL request outstanding but, as it turns out, there was no written FOIL request, does that affect your perspective that, yes, State Police may well have been used politically?

A. I think I would agree with that.

Q. The documents that you say you specifically gave a caveat that are they were not FOILable documents, you see them ending up in the newspaper, does that indicate to you that there was a political agenda operating here when the State Police were brought in to service that agenda? I am not saying you knew about it. Do you understand my question?

A. I understand your question. I can't answer whether there was a political agenda because it's not part of that agenda. But I think a reasonable
person could answer the question that there is a possibility. And I'll tell you this. I know the incident has made a big deal about me being upset. I was upset with Bill Howard because I told him I qualify that I discussed here; that these aren't authentic documents. These aren't Joe Bruno's itineraries, so the answer to your question is there some other agenda here. Could there have been some other agenda? I can't disagree with that.

Q. Can we get back to your statement? I think the question I asked concerning Howard being an operations guy. In this particular episode, as you look back on it do you think that Mr. Howard was operating as an operations guy or political guy?

A. I think when I was going --

Q. At your looking back?

A. When I was going through this I was under the impression that he was an operations guy. I am a reasonable man. As I look back, I can't say that.

BY MS. TOOHER:

Q. Superintendent, you gave prior testimony to
the Attorney General's Office?

A. Yes.

Q. And they specifically asked you about Commission Exhibits 1, 2, 3, and 4 and the creation of those documents. And they specifically asked you whose idea it was that the documents be created and up responded that. I don't recall. It was probably Major Kopy. I told him, you know, to document the information and send it to me. And, I can't say it was presented in this form rather than, for example, the e-mail form that you had previously used.

Answer: I don't know.

Question: When you spoke to Mr. Howard and you told him -- you said, "The itineraries don't exist," do you just explain that part again as to who said what.

Answer: He said, if you could interview with the guys flying out, what we the that way, and if then where they drove that, as you testified, I wouldn't usually use the term "recreation"; I would -- it was a synopsis of what our people said they that day.

Q. Was it your understanding that you were
asked to create such a synopsis?

A. No. I think I asked for the synopsis to be created, not that he said: Create this. It was me saying to Kopy, you know, document and send it up to me so that I could send I said to Howard.

Q. Did you think this was in connection with the FOIL request?

A. Yes.

Q. You did?

A. Yes.

Q. There is nothing in your testimony --

A. This is a document I was having Kopy create.

Q. I understand that. But there is nothing in your testimony before the Attorney General that indicates that you cautioned Mr. Howard not to provide this in response to a FOIL request or that Howard directed that these documents be put on separate sheets of paper and treated in the fashion that they were. Can you explain that inconsistency?

A. One, I would like to read the transcript because, as you know, I have had only an hour to read the transcripts. And I think if you examine it, anyone will see there is a lot of
inconsistencies there. My interview there took place on day two of this investigation when they called me down in a hurry to their office. The A.G. called me, I believe, on the 10th and said, "Would you be willing to cooperate?" And I said, "Absolutely." And by 5:30 the next day I was down there. I had no chance to review any records or documents. But somewhere in my -- if my recollection serves me correctly, they asked me if I told him that these were not to be used for FOIL. And I remember specifically saying that. So I don't know if it's in a different section of the report or whatever. But I remember telling him that. I mean it would make no sense for me to create these documents. I told Kopy to document it and send it up. And that's this document right here. I sent this to Howard. He calls back and says, "Did you put them on this separate sheets of paper?" I don't understand why I would do that. To me, it makes no sense for me to do that.

Q. I understand that that's your testimony, and that's why I am giving you an opportunity to reconcile what you are saying with what appears to be at odds. And we will certainly search the
record in terms of your testimony. I just want to
be clear on the record here today that your
testimony concerning these three documents,
Commission 1 through 4, were created in the
fashion that you have described today and in
response to a direct request from Howard to do so.
A. Let me say this. The splitting up of these
documents from this one page to the three separate
pages were created at the request of Mr. Howard,
okay, the actual creations of this document.
Q. "This document" being commission 23?
A. 23. This one, I believe, Kopy created when
I called him and said to document it and send it
up.
Q. And your recollection is that you forwarded
Commission 23 to Mr. Howard?
A. Howard, yes.
Q. And that he requested that you place it on
the separate sheets of paper with the captions on
it?
A. He didn't say captions. He said place it on
separate sheets of paper. I didn't call Kopy and
say: Separate sheets of paper and he then mailed
that up. And, if my memory serves me correctly, I
just forwarded the e-mail to Howard. It's a possibility that I faxed them, but I remember sending them to Howard. And I get no more calls from him on that matter.

BY MS. TOOHER:

Q. At the time that you sent them, sent Commission 1, 2, and 3 to Mr. Howard, you specifically call I would your testimony here today /THAUPL?

A. Not at the time that I sent it. When he asked for it, when he said -- my recollection says when he said put them on three separate sheets of paper, that's when I gave the caveat. I said, "Remember, these are not Joe Bruno's itineraries. These are what our people did."

Q. It is your testimony that you specifically advised him that these documents are not suitable for production in a FOIL requests?

A. Or something to that effect; I am not going to say I used that exact language, but something to that effect.

Q. And before coming here today did you discuss your testimony with anyone?

A. No.
Q. Have you discussed your testimony with anyone from the executive chamber?
A. No. I have not spoke to anyone from the executive chamber other than Mr. Balboni on homeland security issues.

Q. Did you discuss your testimony with Mr. Valle?
A. I have not discussed my testimony with Mr. Valle. I have discussed this case going back to when this thing first started. Mr. Valle was with me in the Attorney General interview and the District Attorney. And I thank you for allowing me to be here on this. But I have not discussed my testimony with him with regards to any of this. I believe any testimony speaks for itself. I'm not a liar. I don't have any reason to lie. I don't think I did anything wrong here. And I would say this. When you go through your e-mails do you see any conspiratorial conduct on the part of Preston Felton? If I wanted to "get" Joe Bruno wouldn't you see an e-mail: Hey, we could use this against Joe Bruno. There's none of that. I don't operate on that premise. I am just trying to do my job.
MS. TOOHER: Off the record for a second.

(Recess taken)

(Commission Exhibit 36 was marked for identification.)

BY MR. TEITELBAUM:

Q. Superintendent, I want to show you what has been marked as Commission 36. Take a moment to read it and then let me know if you recognize it.

A. Yes, sir.

Q. Tell us what this is, please.

A. This is an e-mail. And I think it was probably June 28th sent to me by Bill Howard and asking if a threat assessments had ever been done on Senator Bruno. At the time when this came in, if I remember correctly, I was over in Massachusetts at a CARE event for accident reduction, something like that. And I was asked about this. And, as you can see, my response was that I think this may have went to -- This was the time it had been on my back burner for awhile. And my response is a new Social Security issue. I know that because the last year but Howard wanted a threat assessment done. And, then, my question
was: What if the senator when I am talked to him on the phone, what if he doesn't want a threat assessment done?

Q. This is a conversation that you are having with Howard -- -

A. Because what happened is when I got the original e-mail -- and I don't think this is the original one. I was about to take off and go to Massachusetts. I sent the e-mail to staff inspector Gary Berwick. Check on this. It got kicked because I had in my Blackberry program Gary Berwick's old e-mail address. And then I resent the e-mail: Check on this to see if he ever had a threat assessment. But that was as a direct request of Bill Howard. And, as you can see here, I am telling him I know he has threat against him because I have handled at least one of those threats against him.

Q. When did the concept of threat assessment come into existence?

A. It came into existence not too long ago, but at the behest of the Ethics Commission. The first time that I remember us ever doing that was when I think Comptroller Hevesi wrote the Commission and
asked if we could provide security for his wife.

That was years ago, not the most recent one. And
the commission advised you would have to check
the records to get an independent threat
assessment. He then comes to us and we do the
independent threat assessment. Basically, the
threat assessment said "low" and we provided the
drivers and security anyway. As you know, last
year it somehow came to a head and the commission
asked follow all of our documentation and we
provided the commission with all of that
documentation. But, other than Hevesi, the only
other people that I know of who are not our
protectees that had a threat assessment is
DiNapoli at his request when he had taken over.
And that came from his First Deputy asking for a
threat assessment. And I remember talking to her
on the phone and said: He is the manager of a
$150 billion trust fund. Of course, he needs a
threat assessment and we did one. And it
basically shows there is a certain threat level.

Q. So, Hevesi and DiNapoli asked for the threat
assessment?

A. It says: Can we have a threat assessment?
Q. Am I correct that no one else asked for a threat assessment?

A. We did a threat assessment, I believe -- again, don't hold me to this -- at the request of the Ethics Commission for Governor Pataki as far as his leaving office. We did a threat assessment and sent the documentation here. And your reply is: Leave it is up to the professionals to determine whether he is at a threat level that requires protection. And, shortly that, we began protection for him.

Q. So before the Hevesi request there was no such thing as a threat assessment done; is that correct?

A. To the best of my knowledge, not by us, other than for our protectees, the Governor's family, and the Lieutenant Governor's. We always do an assessment when a new Lieutenant Governor. We do their house. Get an alarm. Be careful about the vendors they use. We do the same thing for the Governor. In Pataki's case I wasn't there when they did the threat assessment for him. But they took the step, installed an alarm system, canal /RAOE /SAEUFPLTS get wrought iron so you
couldn't get through it, that type of thing.

Q. So, when Howard asks you in Exhibit 36: "Did the flying senator ever have a threat assessments done by S.P., State Police, go back to the Hevesi period because there was no such thing as a threat assessment on people you were not providing security for prior to that point in time?

A. To the best of my knowledge.

Q. That's what I am asking you about.

A. Let me just give you one qualifying thing. If we had a complaint, an active complaint where a threat is made against a senator, we would assign personnel to protect him. As luck has it, two or three weeks ago we received a complaint from the Legislature to complaining they received death threats and we put state police personnel with them for -- on a limited time because the person eliciting the threat said specifically, that you are going to be dead by this dates, so we covered them with protection on that date, which we would do for almost anybody, raise that level of security for them.

Q. Then, Howard asks in that Exhibit 36: Have
we ever documented death threats against him or received, forwarded the complaint or letter for action/analysis, I take it your remark and response --

A. I know he has had some security issues in the last couple of years that were of concern to us. One in particular was a guy who got into his office. It was a response to that inquiry by Howard, correct, yep. And I do know that for a fact because I remember dealing with that threat. And it was some guy, believer it or not, who went to high school with the senator sixty year ago -- sixty-five years ago.

Q. And, I take it, that you didn't as a result of the information that you had concerning the episode, you just described the guy got into the senators office. You talk about security issues, which is in the plural, not singular. Notwithstanding that, you had not done a threat assessment with respect to the senator; correct?

A. No.

Q. Are we correct in characterizing what you were saying here is explicitly, or implicitly, we had not done a threat assessment, but there were
some threats?
A. Yep. And I believe -- I want to say it was
two or three -- not per se threat but the guy
pushing himself into our office and having been
trained in the assessments is something that you
have to be concerned about.
Q. Not someone making a threat to the senator,
but a situation that might be threat issues, I
would call it an approach on a public official, is
what he refer to it, had you done a threat
assessment?
A. As you say, pending, tell me if I'm am wrong
that you would consider that in doing the
assessment.
Q. Yes.
A. Let me just say one thing; that I just
remember. I remember in my conversation with him,
him saying --
Q. "Him" being --
A. Howard. Howard saying I would think of the
threat assessment against the senator is low. And
my response was, "I don't agree with that. I
think it depends on where he is you know."
Q. Geologically, as you mean by.
BY MR. TEITELBAUM:

Q. Yes. Tell us what you meant by that.

A. In his office, the Capitol is a fairly safe place. He has a Sergeant-at-Arms. In New York City nobody knows him. But, if somebody wants to get him, there are places where there is a routine for him that if somebody really wanted to get him, it may create a problem. I'm not sure if you are familiar with what they call the ramp in the Capitol. It is that area where the Governor, Lieutenant Governor, Spike, I'm sorry, Speakers, Comptroller, the Attorney General, they have a care of the ramp is stopped you make a left turn onto State Street. For me when I was at the Capitol I was anticipated. Or because a principal's vehicle has to stop and may have to wait into traffic.

Q. I suspect also just routine if somebody has a routine and somebody and wants to harm a firm and those that routine that that could be a problem?

A. The who don't keep a very routine schedules are a lot less likely to be at a threat level. So, if a person goes to Washington Park twice a
month at different times, there would be in my opinion very little concern there. But if you go every day like I walked. I drive every day to work the same way I get out of my car at about the same time in the morning. So if someone wanted me, it's very easy to get me.

Q. I understand. So, when Howard said to you they claim he needs that Security because of death threats I am not hearing you say in your testimony today: Oh, no. He doesn't needs it. You didn't tell him that.

A. No.

Q. What you told him is that you thought that the assessment had a /HAURD was giving that there was a low security assessments from Howard point of view, from your point of review that was not accurate?

A. Exactly. I would not agree that any public official has an outright low threat assessment because that can change at any moment, you know. The senator can get a bill vetoed that really hypes some nuts off there. And his threat assessments can go from medium to high in a matter of three or four minutes. So, I am very, very
careful to say you will find us very, very careful
to say somebody has -- a public official -- has a
low threat assessment. And, again, we have only
done it three or four times, but we have done it
for governors and Lieutenant Governor's, we have
done it for not so much us, but when visiting
Governors come into New York City we always ask
what as his threat level because we generally
provide one police officer and one vehicle, but I
will give you an example. We never used to give
for every Lieutenant Governor, but when mark
"insurance, week" Kevin was Lieutenant Governor of
Pennsylvania, Lieutenant Governor Schweiker was
always out front on the Amahd Jamal thing. When
they called us and said he's coming to town we
brought a security detail with him because we
recognized that his threat level was a lot higher
than the average Lieutenant Governor. The average
Lieutenant Governor, nobody knows who they are.
You can walk down the street.

BY MR. TEITELBAUM:

Q. It's not true of Senator Bruno. A lot of
people know who is.

A. That's true of upstate. A lot of people
Q. He refers to the senator as the "flying senator." What was your impression of that characterization?

A. I didn't personally -- this is my personal feeling, I don't have a lot of information to base it on. I don't think Bill Howard likes Joe Bruno, if I was to be honest.

Q. Personally to communicate a negative?

A. Contagious about Senator Bruno. And I have always gotten along well with the senator.

Q. Then he says at the bottom here, "They claim he needs S.P. -- I'm sorry, withdrawn. They say in the next to last line, "Defense reminds me of Hevesi, and I am curious why he is sharing with you, that kind of thought processes that he is having. My question is: What was your reaction to reading that?

A. I can't tell you what my reaction was to that. But, shortly before the article come out a reporter had questioned Bruno's staff about this and we were made aware of that from Bruno's staff that this article was coming out.

Q. Who at Bruno's -- I mean this is a staff
person at Senator Bruno's staff who contacted the
State Police?
   A. He said, "We hear a reporter is sniffing
around."

Q. Were they asking you to do something? By
"you" I mean the State Police.
   A. No.

Q. They were just giving you a heads-up?
   A. Just giving a heads-up.

Q. The reason I am asking you about this
particular line, "Defense reminds me of Hevesi" --
and you tell me if I have got this wrong -- it
seems to be moving into no longer simply a
business-like request of the State Police for
information, but now it is showing a point of view
on the part of Howard. Did you read it that way?

Were you surprised to see this?
   A. I would have to say yes. And, as I said,
you know, when he hit me with this low threat
assessments thing, that's why I came back and said
I know he has some security issues and I don't
think a low rating would be appropriate for him.
So, as I look at this I agree that it is going
from saying as a FOIL request to looking like, as
you said earlier, taking a shot at the senator.

Q. In sharing with you his perspective, Senator Bruno's office was launching a "defense" and that reminded him of Hevesi. And his remark to you that he thought that Bruno would have a low threats assessment was contrary to your view. You read into his remark that he is looking for a particular position from you that, in fact, it would be a low assessments?

A. Legitimately I would have to say yes, which is why I said I don't agree with that. So, any threat assessments that we were going to do is going to be by the book. And it's going to say what the threat is. I am never going to send somebody out, a public official or anybody else out there to have a threat and somebody comes back and says, well, you know you said this guy was low but he's dead now, because bottom line is that I am the bag holder. But I don't agree with this assessment as being a low threat. And, to be honest with you, this made me wonder here.

Q. If you mean 36 answered conversations that you had with him --

A. Yes.
MR. TEITELBAUM: I don't have anything else.

BY MS. TOOHER:

Q. E-mail 36 is dated June 29th. You then get the subsequent request.

MR. TEITELBAUM: Let me correct that. There are two dates on here.

Q. The 28th and 29th. You then get the subsequent request for the June 26th itinerary.

Did you have any thought at that time what the continuing request now for the senator's itineraries was about?

A. I would have to see when we got the requests. And I think the request for the one actually was the second.

Q. July 2nd --

A. And I don't know when the article came out.

Q. July 1st.

A. So, you know, at this point Preston Felton -- excuse my language. At this point, Preston Felton is thoroughly pissed off because they represented those three documents as authentic and used it that way. When I say I was angry and told him I was angry, that's when that happened the
morning after this article came out. So, at this point I am thinking we have been drug into something that we shouldn't have been at this point. I am thinking like you are thinking that it's something; not -- personally attacking Joe Bruno. There is no other way for me, to put it -- I'm thinking. Can I prove it, no.

Q. Did you talk to Captain Marmian or anyone else when providing this response July 2nd, on yet another itinerary on Senator Bruno about your concerns in that regard?

A. No, not that I recall.

Q. You just continued to respond to the requests?

A. It was a request from him. I have to respond to that.

MS. TOOHER: I think that's it.

Thank you very much for your testimony today.

(The interview was concluded at approximately 4:30 p.m.)